

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

Appeal No. 13006

APPELLANT'S BRIEF AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

FILED FEB 3 1956

Joseph W. Stewart
CLERK

ALVA G. BLANCHARD

Appellant

vs.

ROBERT C. WATSON, Commissioner of Patents,

Appellee

Appeal from the Judgment of the United States
District Court for the District of Columbia

ALVA G. BLANCHARD,
Appearing in Proper Person,
Residing at 3618 Fairfield Avenue,
Shreveport, Louisiana

ROBERT T. RUSS, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

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1 UNITED STATES COURT OF APPEAL
2 FOR THE DISTRICT OF COLUMBIA CIRCUIT
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APPEAL NO. 13006

ALVA G. BLANCHARD,

Appellant,

V.

ROBERT C. WATSON, COMMISSIONER OF PATENTS,
Appellee.

AN APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the District Court for the District of Columbia, (J. A. 19) in which appellant's suit in equity against appellee was dismissed on the merits.

The action below was instituted by a complaint (J. A. 2) brought under and pursuant to the provisions of Section 4915, Revised Statutes of the United States, as continued in force by Section 5 of the Patent Action

1 of July 12, 1952 (Public Law 593, 82nd Congress 66, Statute 815) and/or
2 Section 145 of the Patent Codification Act (Title 35 U. S. C. Section 145).

3 This Court has jurisdiction with respect to appeals from the final
4 decisions of the District Court by virtue of Revised Statute, Title 28 of
5 the United States Code (28 U. S. C. 1291).

6 The complaint appears in full in the Joint Appendix (J. A. 2).

7 Jurisdiction of the District Court is based upon these facts:

8 (1) That the Commissioner of Patents by decision of the Board
9 of Appeals of the Patent Office, refused to grant appellant a Patent con-
10 taining certain claims in an application filed by appellant, Alva G. Blan-
11 chard, on March 7, 1945, entitled "Automatic Control Mechanism For
12 Pressure Vessels" and which was assigned Serial No. 581,373 in the
13 Patent Office; and

14 (2) That the action was brought in the District Court within six
15 months from the date of the decision of the Board of Appeals.

16 Appellee's answer appears in full in the Joint Appendix (J. A. 9).
17 It admits the allegations of paragraphs I to V and states as to VI that the
18 application was a continuation-in-part rather than a divisional application
19 of the original application. The allegations from VII to XII are admitted
20 and appellee contends that the allegations in paragraph XIII are not suffi-
21 cient to grant the claims in question.

22 The answer also asserts that appellant is not entitled to the claims
23 requested for reasons given in the Examiner's Statement and the decision
24 of the Board of Appeals and in view of additional prior art references as
25 follows:

Singleton No. R E 7,767

June 26 1877

McLaughlin No. 458,794

September 1, 1891

Clark No. 683,021

September 24, 1901

No appeal was taken to the Court of Customs and Patent Appeals.

STATEMENT OF THE CASE

This action originated in the rejection of generic claims 1, 2 and 3 in a divisional application filed March 4, 1945, Serial No. 581,373.

This is a divisional application and was divided by requirement from an earlier divisional application filed February 20, 1941, Serial No. 379,822 in which the rejected claims appeared substantially the same as claims 8, 9 and 10.

This divisional application was divided at the suggestion of the Patent Office from an earlier original application filed October 14, 1935, Serial No. 44, 988, in which the subject matter of claims 8, 9 and 10 appeared as generic claim 15.

After the original application was filed containing generic claim 15 on October 14, 1935, an active infringement was attracted. To meet this active infringement, an application was filed containing only species claims of Appellant's invention, on May 28, 1938, which was assigned Serial No. 210, 585. It was made "Special" as the active infringer also put in an application for a patent and an interference proceedings developed. The infringers earliest date of conception was after Appellant's filing date, and the inference was settled with the patent issued on May 7, 1940, No. 2,199,611, to appellant.

1 of July 12, 1952 (Public Law 593, 82nd Congress 66, Statute 815) and/or
2 Section 145 of the Patent Codification Act (Title 35 U. S. C. Section 145).

3 This Court has jurisdiction with respect to appeals from the final
4 decisions of the District Court by virtue of Revised Statute, Title 28 of
5 the United States Code (28 U. S. C. 1291).

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7 Jurisdiction of the District Court is based upon these facts:

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9 of Appeals of the Patent Office, refused to grant appellant a Patent con-
10 taining certain claims in an application filed by appellant, Alva G. Blan-
11 chard, on March 7, 1945, entitled "Automatic Control Mechanism For
12 Pressure Vessels" and which was assigned Serial No. 581,373 in the
13 Patent Office; and

14 (2) That the action was brought in the District Court within six
15 months from the date of the decision of the Board of Appeals.

16 Appellee's answer appears in full in the Joint Appendix (J. A. 9).
17 It admits the allegations of paragraphs I to V and states as to VI that the
18 application was a continuation-in-part rather than a divisional application
19 of the original application. The allegations from VII to XII are admitted
20 and appellee contends that the allegations in paragraph XIII are not suffi-
21 cient to grant the claims in question.

22 The answer also asserts that appellant is not entitled to the claims
23 requested for reasons given in the Examiner's Statement and the decision
24 of the Board of Appeals and in view of additional prior art references as
25 follows:

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11 379,822 in which the rejected claims appeared substantially the same as
12 claims 8, 9 and 10.

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14 Patent Office from an earlier original application filed October 14, 1935,
15 Serial No. 44, 988, in which the subject matter of claims 8, 9 and 10 ap-
16 peared as generic claim 15.

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19 this active infringement, an application was filed containing only species
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21 Serial No. 210, 585. It was made "Special" as the active infringer also
22 put in an application for a patent and an interference proceedings develop-
23 ed. The infringers earliest date of conception was after Appellant's fil-
24 ing date, and the inference was settled with the patent issued on May 7,
25 1940, No. 2,199,611, to appellant.

Prosecution of the original application with generic claim 15 and others continued. The requirement for division was contested and finally all claims were rejected, with the Examiner's Statement to the Board of Appeals containing the following statement:

"Claims 15 to 17 stand rejected on House in view of Fulton as urged in connection with claims 1 to 5. These are organization claims. Therefore, the Examiner does not consider that specific features of appellant's valve construction are germane to the invention claimed. The Examiner has held that any novelty in appellant's valve construction per se is subject matter for separate applications."
Emphasis ours. (Lines 16 to 23 J. A. 13)

The Board of Appeals sustained the Examiner except as to claim 14, which was allowed. This decision was appealed to the District Court for the District of Columbia. While the case was waiting for trial, appellant had a conference with the Examiner which resulted in the following agreement:

1. That the case would be withdrawn from the District Court.
2. That claim 14 and similar claims would be allowed on the original application.
3. That Appellant would cancel all claims except 14 and refile the subject matter of the cancelled claims before the patent issued

1 on the original application.

2 Pursuant to this understanding Appellant directed a letter to the Patent
3 Office on April 6, 1940, setting out additional claims similar to claim 14
4 and withdrawing all other claims in the following words:

5 "Cancel all claims except 14 and applicant
6 reserves the right to amend the cancelled
7 claims and make them the subject matter
of divisional applications".

(Stipulations, lines 1 to 3) (J. A. 13)

8 Appellant started the preparation of the divisional application to
9 contain the subject matter of the withdrawn claims and it appearing that
10 the application could not be completed before the Patent would issue on
11 the original application with claim 14 and similar claims, a delay in issue
12 was asked for and granted. The request was dated December 5, 1940, as
13 follows:

14 "At this time we have another
15 application pending, which is a
16 partial division of this application,
but we have not quite completed it
for filing yet.

17 We would, therefore, like to have
18 the publication of this patent,
(Application No. 44,988) held ninety
days, or the limit for getting this out."

19 (Stipulations, lines 7 to 12) (J. A. 13)

20 In due course the divisional application with the generic subject
21 matter of claim 15, as claims 8, 9 and 10 was filed on February 20, 1941,
22 Serial No. 379,822, which was about two weeks before the Patent issued
23 on the original application Serial No. 44,988, on March 4, 1941, No.
24 2,233,395.

25 Prosecution of the aforementioned application Serial No. 379,822

1 with generic claims 8, 9 and 10, containing the subject matter of generic
2 claim 15 was continued until division was required again, at which time
3 generic claims 8, 9 and 10 were continued as claims 1, 2 and 3, in a divi-
4 sional application Serial No. 581,373, filed March 7, 1945, which was al-
5 most a year before the patent issued on application Serial No. 379,822, on
6 February 19, 1946, No. 2, 395, 212.

7 The above generic claims 1, 2 and 3 (J. A. 4) are the claims in
8 suit and were finally rejected on only one ground - double patenting - cit-
9 ing Appellant's patent 2, 199, 611 of May 4, 1940.

10 Appellant replied that this reference should not be used as it is
11 a species patent issued on a co-pending application, and generic claims
12 1, 2 and 3, had their origin in a previously filed application Serial No.
13 379,822 on February 20, 1941, in claims 8, 9 and 10, which in turn had
14 their origin in generic claim 15 of the original application Serial No.
15 44,988, filed October 14, 1935.

16 The Patent Office answered that claims 8, 9 and 10 were not the
17 same as Claim 15, and even if they were that claim 15 was cancelled on
18 April 6, 1940, and claims 8, 9 and 10 were not filed until February 20,
19 1941 and this lapse of time from April 6, 1940, till February 20, 1941,
20 was fatal for generic claims 1, 2 and 3.

21 Appellant replied that while claims 8, 9 and 10 were not word
22 for word the same as claim 15, that every element of generic claims 8,
23 9 and 10, and subsequent generic claims 1, 2 and 3, were present in claim
24 15, and further that when claim 15 was withdrawn from the original appli-
25 cation with the combination cancellation-reservation letter of April 6, 1940,

1 it was done at the suggestion of the Examiner. (Supra page 4)

2 The Patent Office answered that the reservation was a nullity
3 under Rule 44 of the RULES OF PRACTICE of the UNITED STATES
4 PATENT OFFICE:

5 "Rule 44. A reservation for a future
6 application of subject matter disclosed
7 but not claimed in a pending application
8 will not be permitted in the pending
9 application." (Lines 12-15 J. A. 23)

10 and that claim 15 was dead as of April 6, 1940, and generic claims 1, 2
11 and 3 were rejected because they could not be considered continuously
12 prosecuted from the original application, which would be necessary to
13 avoid Appellant's species prior art reference.

14 Appellant replied that this rule did not apply as it referred to
15 "subject matter disclosed but not claimed", whereas this reservation
16 was for matter "disclosed and claimed" in the original then pending ap-
17 plication. The Patent Office replied that when cancelled, claim 15 was
18 no longer claimed and the rule applied.

19 When the action of the Board of Appeals in rejecting claims 1,
20 2 and 3, was appealed to the District Court, three old prior art patents
21 not cited by the Patent Office even though they were in their records, were
22 injected into the case. Appellant replies that while this old art may ac-
23 complish some of the results of appellant's invention, that they do so in
24 an entirely different manner and with more and different elements than
25 are employed in appellant's rejected claims, and are therefore not good
references to anticipate Appellant's Invention, which is a definite improve-
ment over the prior art.

APPELLANT'S INVENTION

Prior to 1935, the water level in many oil field boilers was maintained with hand adjusted valves. This was for the reason that it is very important to maintain the correct water level and automatic means were not considered sufficiently reliable or safe.

There was available though a very old and dependable float operated whistle alarm to warn the operator when a dangerously low water level existed within the boiler. This device though was being abandoned as the firemen would think they had a few more minutes to finish whatever they were doing--when the alarm sounded -- and more time would elapse than they thought and soon an explosion would occur.

The mechanical action of this old alarm was very dependable and operated by the action of a float pulling a very small internal unpacked valve from its seat, by its downward movement, thereby permitting steam to pass to a whistle.

This single valve operated by a float was sometimes used to control the water level within the boiler by opening and closing a valve that operated a boiler feed pump. Another would be used to operate an alarm and yet another would be used to put out the fire. This was very expensive to use all three devices on a boiler and was seldom done. After facing the need for a single device for controlling the water level within the boiler, alarming if the water supply failed, and finally cutting off the fire under the boiler if the trouble could not be located, the idea occurred to Appellant that all three functions could be combined by making a structure

1 in which the valves would be opened in a predetermined order by the fall
2 of a float, with one float chamber, one float, one float arm and means on
3 the float arm for varying the point of engagement with the several valves.

4 The idea was produced and tested, and all three functions at suc-
5 cessively lower water levels, that is, the controlling to maintain a certain
6 level, alarming if the water level dropped slightly lower, and cutting off
7 the fire if the water level dropped to a still lower but safe level, were
8 found to be as dependable as the old alarm operated with the single valve.

9 Having all three functions combined into one structure, the eco-
10 nomic problem was solved and the invention is finding wide use.

11 The structure for accomplishing these separate functions with
12 multiple valves opening at predetermined successively lower water levels
13 by the operation of a single float is shown in Figures No. 8 and 9 of the
14 last application S. R. No. 581, 373 filed March 7, 1945, (J. A. 41) also in
15 the preceeding divisional application and in the original application S. R.
16 No. 44, 988, filed October 14, 1935. This is acknowledged by Appellee,
17 lines 3 to 7 Stipulations, (J. A. 12).

18 STATEMENT OF POINTS

- 19
20 1. The trial Court erred in finding that
21 the three rejected claims were anticipated
22 by the prior art.
- 23 2. The trial Court erred in not finding that
24 the three generic claims rejected had
25 their origin in generic claim 15 of

1 the original application.

2 3. The trial Court erred in finding that
3 Rule 44 of the RULES OF PRACTICE of the
4 UNITED STATES PATENT OFFICE, applied
5 to Appellant's reservation of April 6, 1940,
6 so as to prevent the subject matter of
7 generic claim 15 from being carried
8 forward as claims 8, 9 and 10 in the
9 succeeding divisional application Serial
10 No. 379,822.

11 4. The trial Court erred in refusing to
12 order the Commissioner of Patents to
13 issue a Patent to Appellant containing
14 generic claims 1, 2 and 3.

15 SUMMARY OF ARGUMENT

16 Appellant contends generic claims 1, 2 and 3, (J. A. 4) are allow-
17 able and appellant's species claim patent No. 2, 199, 611 of May 4, 1940
18 (J. A. 28) may not be cited against them as it is a patent on a co-pending
19 application and according to law (35 U. S. C. 121) it is prohibited. Species
20 claim patent No. 2, 199,611 issued on an application which was a division
21 of the original application S. R. No. 44, 988 filed October 14, 1935.

22 To Appellee's assertion that the rejected generic claims 1, 2 and
23 3, are not the same as generic claim 15 of the original application, Appel-
24 lant answers that they do not have to be verbatim in order to establish
25

1 continuous prosecution of generic claims from an original application and
2 thereby prevent the use of a species claim patent as a reference against
3 the generic claims. It is enough that the generic claims be divisible from
4 earlier filed generic claims with nothing new added.

5 To Appellee's assertion that the generic subject matter of claim
6 15 was dead as of April 6, 1940, when it was cancelled, until it was re-
7 filed as claims 8, 9 and 10, on February 20, 1941 in application Serial No.
8 379,822, Appellant replies that the so-called cancellation of April 6, 1940,
9 was, in fact a withdrawal contingent upon the acceptance of the reserva-
10 tion retaining the subject matter of the withdrawn claims for a future ap-
11 plication to be filed before the issue of the Patent on the original applica-
12 tion, and that the generic subject matter of claim 15 was refiled as claims
13 8, 9 and 10 on February 20, 1941 Serial No. 379,822, almost two weeks be-
14 fore the issue of the Patent on the original application as Patent No.
15 2,233,395, dated March 4, 1941.

16 To Appellee's assertion that under Rule 44 (Lines 13-15 J. A. 23)
17 the reservation of the subject matter of Claim 15 for refiling in a later
18 application, of April 6, 1940 was a nullity and therefore there were no
19 generic claims in prosecution from the date of this reservation until Feb-
20 ruary 20, 1941 when generic claims 8, 9 and 10 were filed in application
21 Serial No. 379,822, Appellant replies that the rule does not apply as the
22 reservation was not in a 'pending application' but was in an amendment
23 pursuant to an agreement with the Examiner.

24 To Appellee's assertion that the three old Prior Art Patents in-
25 troduced for the first time at the trial below anticipate Appellant's inven-

1 tion, Appellant replies that they cannot perform the functions of the re-
2 jected claims, and have more and different elements than are contained
3 in the rejected claims. Also since Appellant's invention constitutes an
4 improvement over these prior art patents and the generic claims 1, 2 and
5 3 are not broad enough to include the prior art, that appellant is entitled
6 to the allowance of these claims.

8 ARGUMENT

9 In this case Appellant's generic claims 1, 2 and 3 (J. A. 4) were
10 rejected (1) on double patenting citing appellant's species claim patent
11 No. 2, 199, 611 of May 7, 1940 (J. A. 28) and (2) and for anticipation in
12 the old prior art as shown in the patents following:

13 Singleton RE 7,767 June 26, 1877 (J. A. 31)

14 McLaughlin 458,794 September 1, 1891 (J. A. 34)

15 Clark 683,021 September 24, 1901 (J. A. 37)

16 Appellant will take these references up in the above order.

17 AS TO THE REJECTION ON APPELLANT'S SPECIES

18 CLAIM PATENT NO. 2,199,611 OF MAY 7, 1940. (J. A. 28)

19 The law is old and very clear that a species claim patent in a
20 divisional application may not be used against generic claims not yet al-
21 lowed that have been continuously prosecuted from the original application.

22
23 "Where species claim issues on an
24 application which is a division or
25 continuation in part of an earlier
application containing generic

claims, the generic claims may issue last provided they have been continuously prosecuted from the beginning. The issued species claim patent may not be cited against the generic claims that have not yet been allowed." Ex parte Reuter, 61 U. S. P. Q. 65; Vapor Car Heating Co. v. Gold Car Heating and Lighting Co. 296 F. 188, 16 F. 2nd 194, 268 U. S. 705.

This law has been further clarified and brought up to date by the Patent Law enacted July 12, 1952, to be cited under (Title 35 U. S. C. Section 145) as follows:

" 35 U. S. C. 121. DIVISIONAL APPLICATIONS.

If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the requirements of Section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent Office or in the Courts against a divisional application or against the original application or on any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Commissioner may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention. (Emphasis ours)

Section 4 (a) of the Patent Act of July 19, 1952 (public Law 593, 82nd Cong., 2nd sess., ch. 950; 55 Stat. 792) provides: "This Act shall take effect on January 1, 1953 and shall apply to all applications for patent filed on or after such date and to all patents granted on such applications. It shall apply to further proceedings on applications pending

1 on such date and to patents granted on such applications
2 except as otherwise provided." (Emphasis Ours)

3 Appellee claims that the generic claims (J. A. 4) 1, 2 and 3 were
4 not in the original first filed application but were first introduced as claims
5 8, 9 and 10 on February 20, 1941, and denies claim 15 (Lines 17 to 25 J. A.
6 12) of the original application contain their substance.

7 The law appears to be that in order to show continuous prosecu-
8 tion of generic claims from the original application it is not necessary
9 that they be in exactly their same form all the way back. If this were not
10 so a generic claim could not be amended to meet an Examiner's objection
11 and it could not be put in form for allowance. This view is supported as
12 follows:

13 No rule of law compels applicant to
14 put in parent patent containing
15 generic claims all specific claims
16 devisable thereon." Ex parte Jeffry
17 and Mitchell. (Po Bd App) U. S. P. Q. 60,
18 424.

19 Appellant avers that claims 8, 9 and 10 above referred to, are the
20 patentable substance of claim 15 of the original application. Claim 15 is
21 acknowledged to be present in the original application. (Lines 17 to 25 Sti-
22 pulation J. A. 12)

23 Generic claims 1, 2 and 3 in suit are readily shown to be divisible
24 from original claim 15 by comparing the elements of claims 1, 2 and 3
25 with the elements of claim 15 from which they are drawn. To facilitate
the comparison it may be stated that generic claims 1, 2 and 3 embrace
only one idea or invention. It is stated in three claims as the Courts have
for many years confirmed an Applicant's right to restate his invention in

1 a reasonable number of ways. (From the MANUAL on PATENT EXAMIN-
2 ING PROCEDURE Section 706.03 K)

3 The invention claimed in these three generic claims may be ex-
4 pressed in one claim, which divided into its elements are as follows:

- 5
- 6 Element (1) A float chamber,
- 7 Element (2) a plurality of openings
8 through the walls of said
9 chamber,
- 10 Element (3) valves in said openings,
- 11 Element (4) a float lever pivoted
12 adjacent to said openings,
- 13 Element (5) a float thereon,
- 14 Element (6) means on pivoted end of
15 said float arm whereby said
16 valves are lifted from
17 their seats in a predeter-
18 mined order by the fall
19 of said float.

20 Visualization of these elements may be stated as follows:

- 21 Element (1) denotes only one float chamber.
- 22 Element (2) means two or more openings
23 that are separate, the fluid
24 or steam from which may be
25 used for separate purposes.
- Element (3) indicates separate valves for
the separate openings indicated
in the previous element.

1 Element (4) indicates a lever pivoted
2 adjacent to the openings
3 specified in element 2. It also
4 locates the openings in element
5 2, which must be very close to-
6 gether in order for the pivot
7 point of the lever to be adjacent
8 to all of the openings.

9 Element (5) indicates one float only.

10 Element (6) indicates that the means for
11 lifting valves from their seats
12 in a predetermined order by the
13 fall of the float must be on the
14 pivoted end of the float.
15

16 To determine the presence of these six elements of generic claims
17 1, 2 and 3 in original claim 15, the original claim 15 (Lines 17 to 25: Stipula-
18 tions) (J. A. 12), is separated into its elements as follows:

19 Element A In a safety apparatus for boilers,
20 a water supply conduit,

21 Element B a fuel supply conduit,

22 Element C a fluid pressure actuated valve
23 for each of said conduits, and

24 Element D a master control unit comprising
25 control valves for controlling the
fluid pressure for actuating the
valves in said conduits,

1 Element E a lever in said master unit for
2 successively opening said master
control valves, and

3 Element F means in said unit responsive to
4 fluctuations in the water level in
the boiler for rocking said lever.

5
6 When generic claims 1,2 and 3 were divided from the above ori-
7 ginal claim 15, the elements A, B and C were dropped as their inclusion
8 was the primary reason for claim 15's rejection as shown in the Examin-
9 er's Statement as follows:

10 "Claims 15 to 17 stand rejected on
11 House in view of fulton as urged
in connection with claims 1 to 5.
12 These are organization claims. There-
fore, the Examiner does not consider
13 that specific features of appellant's
valve construction are germane to the
14 invention claimed. The Examiner has
15 held that any novelty in appellant's
valve construction per se is subject
matter for separate applications.
16 (Emphasis ours) (Lines 15 to 19 J. A.
17 13)

18 Each element of generic claims 1, 2 and 3 may be found in the re-
19 maining elements D, E and F of claim 15, as follows:

20 Element (1) — A float chamber, —

21 is drawn from element D, as

22 "a master control unit" must of

23 necessity be housed in a chamber.

24 Element (2) — a plurality of openings through
25 the walls of said chamber, —

1 is also drawn from element D, as
2 shown in the words "comprising
3 control valves".

4 Element (3) — valves in said openings,—

5 is also drawn from element D, as
6 shown in the same words as
7 mentioned above "comprising
8 control valves".

9 Element (4) — a float lever pivoted adjacent
10 to said openings,—

11 is drawn from element E, as
12 shown in the words "a lever in
13 said master unit".

14 Element (5) — a float thereon, —

15 is drawn from element F, as
16 shown in the words "means in
17 said unit -- for rocking said
18 lever".

19 Element (6) — means on pivoted end of said
20 float lever whereby said valves
21 are lifted from their seats in a
predetermined order by the fall
of said float.—

22 is drawn from element E, as
23 shown in the words "for successively
24 opening said master control Valves".

25 From this comparison the conclusion must be that generic claims

1 1, 2 and 3 had their origin in generic claim 15 of the original application
2 and that there was continuous prosecution of the generic subject matter
3 of these claims from the date of the original application, October 14, 1935,
4 until the present.

5 Appellee asserts that even if continuous prosecution of generic
6 claims from the original application could otherwise be shown, that claim
7 15 was cancelled on April 6, 1940 and the application carrying forward
8 the subject matter of claim 15 as claims 8, 9 and 10 was not filed until
9 February 20, 1941 some time after appellants species patent claim issued on
10 May 7th, 1940.

11 Appellant denies that claim 15 was cancelled within the usual
12 meaning of this word. It was actually only withdrawn from the original
13 application as the result of a conference with the Examiner, for the pur-
14 pose of making the subject matter of the withdrawn claims the subject of
15 a new application and for the additional purpose of preparing the original
16 application for patent issue with the claim allowed and additional claims
17 thought allowable at the conference.

18 The actual wording of this reservation was as follows:

19 "Cancel all claims except 14 and
20 applicant reserves the right to
21 amend the cancelled claims and make
22 them the subject matter of divisional
23 applications." (Supra page 5)

24 This wording cannot possibly mean anything except the cancella-
25 tion was on a contingent basis which had for its effect only the withdrawal
of these claims to refile in another application before the issue of the pat-
ent on the original application.

1 To further show that the wording of Appellant's letter of April 6,
2 1940 was intended and accepted only as a withdrawal of these claims
3 for the purpose of refiling them in a divisional application as suggested
4 by the Examiner (Supra page 4), before the patent issued on the original
5 application S. R. No. 44,988, appellant wrote a "delay in issue request"
6 to the Patent Office on December 5, 1940, as follows:

7 "At this time we have another application
8 pending, which is a partial division of
9 this application, but we have not quite
10 completed it for filing yet.
11 We would, therefore, like to have the
12 publication of this patent (Application
13 No. 44, 988) held ninety days, or the limit
14 for getting this out". (Supra page 5)

15 This request was granted as the patent on original application
16 S. R. 44,988 issued on March 4, 1941, No. 2,233,395, about two weeks after
17 the generic subject matter of original claim 15 was carried forward in ap-
18 plication S. R. 379,822 filed February 20, 1941, as claims 8, 9 and 10.

19 Appellee asserts at this point that the reservation of April 6,
20 1940 was a nullity as it was prohibited by Rule 44 (J. A. 23 Lines 12-15.)
21 of the Rules of Practice of the United States Patent Office, therefore claim
22 15 was dead as of April 6, 1940 and since its generic substance was not
23 carried forward as claims 8, 9 and 10 in application S. R. 379,822 until
24 February 20, 1941 the continuous prosecution was interrupted which is
25 fatal for the allowance of generic claims 1, 2 and 3.

26 Rule 44 is as follows:

27 "Rule 44. A reservation for a future application
28 of subject matter disclosed but not claimed
29 in a pending application will not be permitted
30 in the pending application". (J. A. 23 Lines 12-15)

1 When this rule was first applied in the Patent Office appellant
2 instinctively knew it was fundamentally wrong but could only point to the
3 fact that the rule applied to subject matter disclosed but not claimed
4 whereas appellant's reservation was for subject matter disclosed and
5 claimed. The case however turned on the application of this rule, the
6 lower Court holding as follows:

7 "The plaintiff contends that this rule has
8 no application to subject matter which is
9 not only disclosed, but which is claimed,
10 but he loses sight of the fact that, after
11 cancellation of the claim, the subject mat-
12 ter was disclosed and not claimed, and in-
13 deed it was not claimed until after the
14 species patent issued. In this situation, it
15 is clear that a patent cannot now be issued
16 on such generic claims". (J. A. 17 Lines
17 1 to 6)

18 The District Court fell into the same error as did the Patent
19 Office, and appellant knowing instinctively that such a rule could not be
20 right, that would set a trap for an unwary applicant by which he could
21 lose valuable patent rights, began to look for the reason for the wrong
22 interpretation of the rule. It was soon found.

23 The reason Rule 44 does not apply is that it refers only to re-
24 servations in pending applications and this does not include reservations
25 in amendments, pursuant to agreements with the Examiner.

Appellant has also just discovered that Rule 44, as hereinbefore
stated has been abandoned, and a new Rule 79 has been put in the current
RULES OF PRACTICE, that amends the old rule in such a way that it is
no longer possible to misapply it. It follows:

"79. RESERVATION CLAUSES NOT PERMITTED.

1 A reservation for a future application of
2 subject matter disclosed but not claimed
3 in a pending application will not be
4 permitted in the pending application,
5 but an application disclosing unclaimed
6 subject matter may contain a reference to
7 a later filed application of the same
8 applicant or owned by a common assignee
9 disclosing and claiming that subject
10 matter." (Rules of Practice of the United
11 States Patent Office, September 1955)

12 In the event Appellee still asserts that old Rule 44, applies to re-
13 servations in amendments withdrawing claims for divisional applications,
14 attention is called to Rule 51, which describes an application. It follows:

15 "51. GENERAL REQUISITES OF AN APPLI-
16 CATION.

17 Applications for patents must be made to the
18 Commissioner of Patents, A complete appli-
19 cation comprises:

- 20 (a) A petition or request for a patent,
21 see rule 61.
- 22 (b) A specification, including a claim or
23 claims, see rules 71 to 77.
- 24 (c) An oath, see rule 65.
- 25 (d) Drawings, when necessary, see rules
81 to 88.
- (e) The prescribed filing fee. (see rule
21 for filing fees.)"

18 Appellant suggests that having shown that Rule 44, by its own
19 terms could not apply to the reservation of April 6, 1940, that there was
20 continuous prosecution of generic subject matter from generic claim 15
21 in the original application to the generic claims 1, 2 and 3 of the present
22 application and that appellant's species claim patent on a copending appli-
23 cation should not be cited against them.

24 It is suggested that the Patent Office should have known that such
25 a rule as 44 at the end of a long list of rules pertaining to the preparation

1 of applications could not possibly refer to reservations anywhere except
2 those in pending applications. They should have seen that the mandatory
3 nature of the rule containing the phrase "will not be permitted" would
4 necessarily prohibit its application to a reservation pursuant to an agree-
5 ment with the Examiner to refile the subject matter claimed instead of
6 continuing the suit. This error of the Patent Office has cost appellant a
7 great deal of money in lawyers fees and a great amount of appellant's time.

8 AS TO THE OLD PRIOR ART REFERENCES

9
10 This old prior art should not have been admitted to the lower
11 Court as there was no witness to testify that it was "newly found".

12 Had there been Appellant could have shown by cross-examination
13 or other witnesses to the contrary.

14 These old patents are now and have been in the same classifica-
15 tion as will be assigned to appellant's invention if granted, for fifteen years
16 or more and the fact that they have not been cited by the Patent Office is
17 significant.

18 Had they been cited by the Patent Office, the Examiner, as re-
19 quired by the RULES OF PRACTICE,

20 "106. Rejection of Claims. If the invention
21 is not considered patentable, or not con-
22 sidered patentable as claimed, the claims,
or those considered unpatentable will be
rejected.

23 In rejecting claims for want of novelty
24 or for want of invention the examiner must
cite the best reference at his command. When
25 a reference is complex or shows or describes
inventions other than that claimed by the ap-

1 plicant, the particular part relied on must
2 be designated as nearly as practicable.
3 The pertinence of each reference, if not
4 obvious, must be clearly explained and each
5 rejected claim specified." (1955 Rules of
6 Practice of the United States Patent Office)

7 would have been required under this rule to explain clearly exactly how
8 the references applied to the claims rejected. If the Examiner was not
9 correct it would be perfectly clear to any later reviewing Court. The Ap-
10 pellant is entitled to this clear explanation that the rule says "must" be
11 given when rejecting a claim. That is what appellant paid a fee for when
12 the application was filed.

13 The Court below erred in even considering these old prior art
14 patents, that were never cited while the application was in the Patent Of-
15 fice; for the reason that the patent law puts the burden of proof on the Ex-
16 aminer to explain how a prior art patent negatives invention as stated in
17 Rule 106 (supra) and by considering this prior art without the Patent Of-
18 fice first having considered them and given their reasons in writing the
19 burden is shifted to the applicant which was not the intent of the patent
20 law.

21 For the reasons stated appellant's application should be remanded
22 to the Patent Office for a proper rejection with a technical explanation as
23 to how this old prior art applies to negative appellant's invention. Other-
24 wise the burden of doing so is cast upon the Courts to do so and they are
25 not authorized under the law to do this.

 However Appellant will proceed to show that this old prior art
 in no way negatives the invention as expressed in generic claims 1, 2 and 3.

SINGLETON RE 7,767 June 26, 1877 (J. A. 31)

The law as to what is patentable is as follows:

"35 U. S. C. 101. Inventions Patentable.
Whoever invents or discovers any new and
useful process, machine, manufacture, or
or composition of matter, or any new or use-
ful improvement thereof, may obtain a patent
therefor, subject to the conditions and require-
ments of this title."

Appellant submits that he has made an improvement in multiple float operated internal unpacked valves. Prior to this improvement single seated unpacked float operated valves were common. This improvement consisting of a structure containing multiple valves, opened in a predetermined order by the downward movement of a single float attached to a single lever. The economy of making one structure do the work of two or more shows an improvement.

The structure for accomplishing this result is covered by Appellant's claims 1, 2 and 3. (J. A. 4)

A composite claim which would be the equal of all three generic claims in suit and that describes the invention is previously stated on page 15 (supra), and is divided into its elements for the purpose of reference as follows:

- | | |
|---------|--|
| Element | (1) A float chamber, |
| | (2) a plurality of openings
through the walls of
said chamber, |
| | (3) valves in said openings, |
| | (4) a float lever pivoted
adjacent to said openings, |

1 Element (5) a float thereon,

2 (6) means on pivoted end of
3 said float arm whereby said
4 valves are lifted from their
5 seats in a predetermined
6 order by the fall of said
7 float.

8 These elements may be said to limit the scope of the claims to a
9 structure that includes each and every one of these elements. That is to
10 say, if these generic claims are allowed, a structure with 5 of these ele-
11 ments but not the sixth, would not infringe and in order to infringe these
12 claims a structure would have to include these same (6) elements.

13 The law is well settled as expressed in Walker on Patents, Vol.
14 3, Deller Ed.

15 "Par. 461 - Omission -
16 Omission of 1 element or ingredient
17 of a combination covered by any
18 claim of a patent, averts any charge
19 of infringement based on that claim."
20 10 or more citations beginning with
21 Prouty v. Ruggles 16 Pet (41 U. S. 431,
22 1842) and ending with Weatherford v. Coupe
23 (147 U. S. 322, 1893)"

24 The law as to the necessity of using all the elements of a claim
25 in order to infringe that claim is expressed on page 1697 of the same re-
ference as follows:

"A combination is an entirety. If
one of its elements is omitted, the
thing claimed disappears. Every part
of the combination claimed is conclu-
sively presumed to be material to the
combination, and no evidence to the con-
trary is admissible in case of alleged

1 infringement." About 15 cases are cited
2 as holding this law, beginning with Vance v.
3 Campbell 1 Black (66 U. S.) 427,450 17 L. ED.
4 168 (1891) and ending with Electric Protection
5 Co. v. American Bank Protection Co, 184 Fed.
6 916 (1910)

7 The law as to the avoidance of infringement by leaving out one
8 element is set out on page 623 PATENT LAW AND PRACTICE by AMDUR
9 1935 follows:

10 "In other words, if a patentee introduces
11 an unnecessary element into the claim
12 for his invention, and another discovers
13 that such element is unnecessary or super-
14 fluous, and thereby does not use it, but
15 makes a structure otherwise identical with
16 that of the patent, is he an infringer? This
17 point has been passed upon many times - -
18 the defendant does not infringe the claims in
19 issue". Lorraine Development Co. v. General
20 Electric Co. 198 Fed 100,113,116 (N. D. NY
21 1912)

22 From the foregoing law the conclusion must be that elements of claims
23 are limitations and are strictly construed.

24 To determine whether or not a prior art patent anticipates a pro-
25 posed claim, it is the general practice to separate the proposed claim into
26 its elements and then lay each one of these elements over the cited refer-
27 ence. If each of the elements is present in the reference, the claim is,
28 of course, unpatentable. If each of the elements is not present in the
29 reference, the reference is inadequate as it is the combination of elements
30 that makes the claim.

31 The SINGLETON reference is a float operated structure for blow-
32 ing a whistle at one level and putting out the fire at a lower level. It has

1 a float but from this point on it is so totally different that it is difficult to
2 compare with appellant's claims.

3 It has Element (1) A float chamber.

4 It does not have Element (2) a

5 plurality of openings through the

6 walls of the said chamber, as there

7 is only one passage C from the openings G, G, G', and that is not through
8 the walls thereof but leads to another chamber from which there are other
9 outlets. Nowhere in this structure can a plurality of openings capable of
10 being used for separate purposes be found. Not having this element it
11 cannot have elements 3, 4, 5 and 6 as each of these elements are predicated
12 on element (2) being present. For instance if a structure did not have
13 "a plurality of openings through the walls of said chamber" it could not
14 possibly have element (3) valves in said openings.

15 It necessarily follows then that if the structure does not have
16 elements 2 and 3 it could not possibly have element (4) a float lever pivoted
17 adjacent to said openings, as the structure must have the openings and
18 valves in said openings like elements 2 and 3 in order to have element 4.

19 The structure does have sequentially opened ports, G, G, G' ,
20 within the float chamber but they are not valves as they have a common
21 outlet C, and their only purpose is to increase the volume of flow through
22 the passage C.

23 For the reason that this structure has only 1 element of the com-
24 bination of 6 elements necessary to anticipate appellant's generic claims
25 it is submitted that this reference is totally inadequate.

AS TO THE McLAUGHLIN REFERENCE No. 458,794, (J. A. 34)

This is a device adaptable to blow a whistle in the event of low water by opening a valve and closing a valve opening in the event of high water to shut off a pump.

This structure has Appellant's Element (1) A Float chamber,

This structure has only one opening, or passage--"not a plurality of passages"--from the float chamber and that is L. The structure A is described in the specifications as a spring actuated valve (line 33) (J. A. 35). It is also pushed from its seat as distinguished from lifted from its seat as is specified in element (6).

Element (2) a plurality of openings
through the walls of said
chamber,

is not present in this structure. This element of Appellant's contemplates only such openings as L capable of receiving a valve that may be lifted from its seat. The whistle valve (a) is no equivalent as it is pushed from its seat, is held closed by a spring, and must be packed. (Lines 33 to 36 J. A. 35)

Not having element (2) a plurality of openings, it is incapable of having element (3) valves in said openings.

In order to have elements 4, 5 and 6 it would have to have elements 2 and 3. For instance in order to have element 4 the float lever would have to be adjacent to a plurality of openings with valves therein and in their absence there is no element 4.

This structure has only element (1) A float chamber of the 6

1 element combination claims in suit and is totally incapable of anticipating
2 appellant's invention.

3
4 THE CLARK REFERENCE No. 683,021 (J. A. 37)

5 The Clark device is a single valve operated structure to furnish
6 steam to operate a pump for holding the water level uniform.

7 This structure has appellant's

8 Element (1) A float chamber.

9 It does not have element (2) a plurality of openings through the
10 walls of said chamber, as the stems 12 and 13 are one valve, moving in
11 unison — one up and the other down — as the float falls. As these two
12 stems move in unison, steam passes through the openings 7 and 10, con-
13 verge and pass through the walls of the float chamber 5 at the single open-
14 ing 19 to operate a pump. Openings 7 and 10 cannot be said to be the equal
15 of a plurality of openings through the wall thereof capable of performing
16 separate functions at predetermined levels by the lowering of a float as is
17 contemplated in appellant's element 2.

18 Element (3) valves in said openings

19 is not present in this structure, as the previous element 2 is not
20 present since 7 and 10 are one valve emerging at 19 from the float cham-
21 ber.

22 Element (4) is not present for to be present it must be adjacent
23 to a plurality of openings with valves therein.

24 Element (6) means on pivoted end of said float arm whereby
25 said valves are lifted from their seats in a predetermined order.

1 is not present, as the said valves referred to are not present. Even if
2 openings 7 and 10 were called separate valves which they are not, element
3 6 would still not be present as openings 7 and 10 are opened at the same
4 time, pivoting at 14 (J. A. 37), and not in a predetermined order as is
5 contemplated in this element.

6 This structure has only 1 element of the 6 element combination
7 specified in Appellant's generic claims and is totally incapable of antici-
8 pating these claims.

9 CONCLUSION

10 It is believed to have been shown that Appellant's generic claims
11 1, 2 and 3 had their origin in generic claim 15 of the original application
12 and that there was continuous prosecution of the subject matter of these
13 claims from the original application to the present and that under the law
14 appellant's species claim patent on a co-pending application may not be
15 cited against them.

16 Appellant has also shown that under the law he is entitled to an
17 explanation from the Patent Office as to exactly how the old prior art pat-
18 ents introduced in the District Court, negatives the invention as expressed
19 in generic claims 1, 2 and 3. If these old prior art references may be in-
20 troduced in the District Court instead of the Patent Office as required by
21 law, appellant has shown that the generic claims 1, 2 and 3 do not read on
22 any of them and none of them have the combination of elements included in
23 these claims.

24 WHEREFORE:

25 It is prayed that this Honorable Court, in view of the facts and the

1 law as herein stated, will reverse the Judgment of the lower Court and
2 hold that appellant is entitled to generic claims 1, 2 and 3 in a patent for
3 the reason that their substance was continuously prosecuted from the ori-
4 ginal application, which bars the use of the copending patent 2,199,611 as
5 a reference and the old prior art patents cited do not anticipate the claims.

6 As an alternate it is prayed that it will be found that there was
7 continuous prosecution of the subject matter of generic claims 1, 2 and 3
8 from the original application and the copending patent 2,199,611 should
9 not be used as a reference, and that the application shall be remanded to
10 the Patent Office for the proper consideration and explanation required
11 when rejecting claims on the old prior art, as is required under rule 106
12 of the Rules of Practice of the United States Patent Office.

13 Appellant further prays for such other relief as appears advisa-
14 ble to this Honorable Court.

15 Respectfully submitted,

16
17 Alva G. Blanchard
18 Appellant
19
20
21
22
23
24
25

JOINT APPENDIX

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1 Filed May 26, 1953

2 IN THE DISTRICT COURT FOR THE UNITED STATES

3 FOR THE DISTRICT OF COLUMBIA

4 Civil Action No. 2390-53

5 Alva G. Blanchard, P. O. Box 1138,
6 Shreveport, Louisiana, Plaintiff,

7 v.

8 John A. Marzall, Commissioner of Patents,
9 U. S. Patent Office, Washington, D. C., Defendant.

10 BILL OF COMPLAINT

11 SUIT TO ENFORCE ISSUE OF A PATENT

12 The Plaintiff states as follows:

13 1. The Plaintiff Alva G. Blanchard, is a citizen of the UNITED STATES
14 and a resident of Shreveport, Caddo Parish, Louisiana, and brings this
15 suit in his own right.

16
17 2. The Defendant, John A. Marzall, is the Commissioner of Patents
18 of the United States, a legal resident of the District of Columbia, and is
19 sued as Commissioner of Patents of the United States.

20
21 3. The bill is filed in accordance with the provisions of Federal Laws
22 of the United States as provided for under Revised Statutes, Section 4915.

23 4. The Plaintiff, Alva G. Blanchard, filed an application for patent
24 in the United States Patent Office entitled Automatic Control Mechanism
25 for Pressure Vessels, On March 7, 1945, which was given Serial Number

1 581,373.

2
3 5. The foregoing application was a division of a previous application
4 entitled Automatic Control Mechanism for Pressure Vessels which was
5 filed February 20, 1941, and given Serial Number 379,822 and later issued
6 as Patent Number 2, 395, 212 on February 19, 1946, which is about eleven
7 months after the application in paragraph 4 was filed.

8
9 6. The foregoing application which resulted in patent Number
10 2,395, 212 was a division of a previous application entitled Safety Appara-
11 tus for Boilers which was filed on October 14, 1935, and given Serial Num-
12 ber 44,988 and later issued as Patent Number 2, 233, 395, on March 4,
13 1941, which is about two weeks after the filing date of the aforementioned
14 Patent Number 2,395,212.

15 7. During the pendency of the foregoing application Number 44,988,
16 which was filed on October 14, 1935 and later issued as patent 2,233,395,
17 a divisional application was filed entitled Valve Operating Structure on
18 May 28, 1938, and later issued as Patent Number 2,199,611 on May 7,
19 1940.

20
21 8. The application Serial No. 581,373 filed March 7, 1945, by rea-
22 son of overlapping filing and issue dates as related in paragraphs 5 and
23 6 acquires the filing date of the original application Serial No. 44,988 of
24 October 14, 1935, in so far as the subject matter was disclosed.

25 9. The said application has been duly prosecuted in accordance with

1 the laws of the United States and the Rules of the Patent Office.

2
3 10. The said application has been passed upon by the Primary Ex-
4 aminer, who refuses to allow the following claims:

5 1. A float chamber, a plurality of fluid
6 passages through the wall thereof, valves
7 in said passages, a float arm pivoted ad-
8 jacent to said passages, a float thereon,
9 and means on the pivoted end of said float
10 arm whereby said fluid passages may be
11 opened in a predetermined order by the
12 fall of said float.

13
14 2. A float chamber, a plurality of steam
15 conducting passages leading from said float
16 chamber, a float lever, a pivotal support ad-
17 jacent to said plurality of steam conducting
18 passages, a float on said float lever, means
19 on pivotal end of said float lever whereby
20 valves in said plurality of steam conducting
21 passages are lifted from their seats in a
22 predetermined sequence by the fall of said
23 float.

24 3. A float chamber, a plurality of outlets
25 from said float chamber, a float lever pivoted

1 adjacent to said plurality of outlets, a float
2 on said lever, means on pivoted end of said
3 lever controlling said plurality of outlets,
4 whereby said outlets may be opened in a pre-
5 determined order by the fall of said float.

6
7 which he finally rejected in accordance with the rules of the Patent Office.

8 11. An appeal was taken from the decision of the Primary Examiner
9 to the Board of Appeals, who affirmed the rejection of the Primary Ex-
10 aminer in their decision dated November 28, 1952.

11 12. The Commissioner of Patents, by the Board of Appeals, contends
12 these claims are rejected since they are generic and applicant's species
13 patent mentioned in the foregoing paragraph 7 issued on May 7, 1940,
14 would bar them and in the Examiner's statement to the Board of Appeals
15 it is stated this way:
16

17 "To state the situation in different words,
18 the species claims in the patent relied upon
19 were permitted to issue May 7, 1940, during
20 the hiatus between the cancellation (in Serial
21 No. 44,988, Patent file 2,233,395) of the gen-
22 eric combination claim 15 on April 6, 1940,
23 and the presentation (in Serial No. 379,822
24 patent file 2,395,212) of generic element Claims
25 8,9 and 10 on February 20, 1941."

1 According to the Examiner this lapse of about ten months from the can-
2 cellation of the generic claim 15 on April 6, 1940, to the filing of generic
3 claims 8, 9 and 10 on February 20, 1941, during which time no generic
4 claims were under consideration, is fatal to the claims in this suit. Also
5 that generic claim 15 is not the same claim as the claims in suit.

6
7 13. The applicant disagrees with these contentions of the Commissioner
8 of Patents and contends that there was no hiatus or lapse of time between
9 the cancellation of the generic claim 15 in the original application, Serial
10 No. 44, 988, dated October 14, 1935, and filing of generic claims 8, 9 and
11 10 on February 20, 1941, Serial No. 379,822, which was further divided
12 and claims 1, 2 and 3 of the instant suit were filed in Application Serial
13 Number 581,373, dated March 7, 1945.

14 Applicant's original generic claim 15 was in combination as
15 follows:

16 "In a safety apparatus for boilers, the com-
17 bination of a water supply conduit, a fuel sup-
18 ply conduit, a fluid pressure actuated valve for
19 each of said conduits, and a master control
20 unit comprising of control valves for control-
21 ling the fluid pressure for actuating the valves
22 in said conduits, a lever in said master unit
23 for successively opening said master control
24 valves, and means in said unit responsive to
25 fluctuations in the water level in the boiler

1 for rocking said lever."

2
3 The Examiner rejected claim 15 as a combination, stating "Any
4 novelty in the valves is subject matter for another application", in his
5 letter dated July 23, 1936. Later in the Examiner's appeal statement it
6 was reiterated that "appellants valve construction, per se, is subject
7 matter for separate application".

8 Claim 15 with the combination left out is substantially the same
9 as the three generic claims in suit and Applicant contends that through
10 this claim the subject matter of the generic claims in suit date back to
11 the original filing date of October 14, 1935.

12 Applicant contends that the communication of April 6, 1940, in
13 which Examiner contends claim 15 was cancelled, was in fact merely an
14 offer to cancel and was to become irrevocable only with the issue of a
15 patent. The actual words concerning claim 15 in this communication
16 were:

17 "Cancel all claims except Claim 14
18 and Applicant reserves the right to
19 amend the cancelled claims and make
20 them the subject matter of divisional
21 applications".

22 Since the entire contents of the April 6, 1940, communication
23 including the above statement could have been cancelled by filing a new
24 amendment up to the final issue of the patent on March 4, 1941, the can-
25 cellation requested on April 6, 1940, should be considered as only to be-

1 come effective on March 4, 1941, the issue date of the patent Number
2 2,233,395.

3 Therefore Applicant contends that the filing date of February
4 20, 1941, for Application Serial No. 379, 822 which contained the revised
5 generic claims was about two weeks before the effective date of the can-
6 cellation date for claim 15 in the original application.

7 WHEREFORE, the plaintiff prays that the Honorable Court decree
8 that there was continuity of prosecution of generic claims from the origi-
9 nal Application Serial No. 44,988 filed October 14, 1935, to the present
10 generic claims in suit and that the Commissioner of Patents be directed
11 to allow the said claims and such other claims as upon hearing the Court
12 may find patentable, and that the Commissioner of Patents appear and
13 answer this complaint, but not under oath, answer under oath being here-
14 by expressly waived.

15 Alva G. Blanchard
16 Plaintiff

17 Filed June 17, 1953

18 MOTION TO AMEND

19
20 Comes now the plaintiff who avers that due to a change in the
21 office of the Commissioner of Patents, of which he was not aware, the
22 wrong name was used in the filing of this suit.

23 Wherefore plaintiff respectfully prays that the Chief Clerk of
24 this Honorable Court be instructed to amend this petition by substituting
25 the name of Robert C. Watson for that of John A. Marzall as Commission-

er of Patents and that all parties be notified of this change.

Alva G. Blanchard
Plaintiff

Filed June 25, 1953

ANSWER TO THE COMPLAINT

To the Honorable the Judges of the United States District
Court For the District of Columbia.

1. The defendant admits the allegations of paragraph 1 of the complaint.

2. He admits that he is Commissioner of Patents, that as such his official residence is in the District of Columbia, and that he is sued in his official capacity.

3,4,5. He admits the allegations of paragraphs 3,4, and 5.

6. He denies the allegations of paragraph 6. He states that the later application referred to in that paragraph was a continuation-in-part of the earlier one.

7, 8, 9, 10, 11, 12. He admits the allegations of paragraph 7 to 12.

13. He admits that the plaintiff makes the contentions set forth in paragraph 13. He denies that the said contentions are correct or that they are sufficient to justify the grant of a patent containing any of the claims set forth in the complaint.

FURTHER ANSWERING, the defendant states that the plaintiff

1 is not entitled to a patent containing any of the claims set forth in the com-
2 plaint for the reasons given and in view of the references cited in the Ex-
3 aminer's statement, decision of the Board of Appeals in the plaintiff's
4 application , and in view of the following additional references:

5			
6	Singleton	Re. 7,767	June 26, 1877
7	McLaughlin	458,794	Sept. 1, 1891
8	Clark	683,021	Sept. 24, 1901

9 Proffer of copies of the said statement, decision and references is hereby
10 made.

11 Respectfully submitted,

12 E. L. Reynolds
13 Solicitor, U. S. Patent Office,
14 Attorney for Defendant.

15 Filed July 8, 1953

16 ORDER AMENDING CAPTION OF COMPLAINT

17 Upon the motion of Alva G. Blanchard, Plaintiff in the above
18 styled and numbered suit;

19 IT IS HEREBY ORDERED that the suit styled A. G. Blanchard
20 vs. John A. Marzall, Commissioner of Patents, Civil Action 2390-53, be
21 changed of record so that the complaint in said suit be and is hereby
22 amended so that said suit be styled A. G. Blanchard vs. Robert C. Watson,
23 Commissioner of Patents.

24 Thus done and signed in chambers in Washington, D. C. this
25 8th day of July, 1953.

J. W. Morris

Judge, United States District Court
for the District of Columbia.

Filed May 23, 1955

STIPULATION

The above parties, having conferred in regard to the above identified action, agree and stipulate that the following facts may be accepted as established for purposes of review by the Honorable Court of the re-jection on double patenting entered by the Patent Office examiner and affirmed by the Board of Appeals in plaintiff's application Serial No. 581,373, filed March 7, 1945.

Plaintiff filed on October 14, 1935, an application, Serial No. 44,988, upon which patent No. 2,233,395, was granted on March 4, 1941. This is plaintiff's parent application and its filing date is plaintiff's effective filing date.

During the pendency of application Serial No. 44,988, and on May 28, 1938, plaintiff filed an application, Serial No. 210,585, upon which patent No. 2,199,611 was granted on May 7, 1940. Application Serial No. 210,585 is a division of plaintiff's parent application Serial No. 44,988, and is entitled to the benefit of its filing date, October 14, 1935.

On February 20, 1941, and during the pendency of application Serial No. 44,988, plaintiff filed an application, Serial No. 379,822, upon which patent No. 2,395,212 was granted on February 19, 1946. Application Serial No. 379,822 is a continuation-in-part of application Serial No. 44,988. As to the subject matter of claims 1,2 and 3 in suit, plaintiff is

1 entitled to the benefit of the filing date of application Serial No. 44,988,
2 to wit, October 14, 1935.

3 Plaintiff's application in suit, Serial No. 581,373, was filed on
4 March 7, 1945, and during the pendency of application Serial No. 379,822.
5 As to the subject matter of claims 1, 2, and 3 in suit, plaintiff is entitled
6 to the benefit of the effective filing date of application Serial No. 379,822,
7 which is October 14, 1935.

8 As filed on February 20, 1941, plaintiff's application Serial No.
9 379,822 contained claims 8, 9 and 10, which are, in substance, the same
10 as claims 1, 2, and 3 in suit, but which are not identical therewith.

11 Claims 1, 2 and 3 are generic claims.

12 As granted on May 7, 1940, plaintiff's patent No. 2,199,611 in-
13 cluded claims expressing one of the species defined in generic claims
14 1,2 and 3.

15 As filed on October 14, 1935, plaintiff's application Serial No.
16 44,988 contained a claim numbered 15, reading as follows:

17
18 "In a safety apparatus for boilers, the combination of a
19 water supply conduit, a fuel supply conduit, a fluid
20 pressureactuated valve for each of said conduits, and
21 a master control unit comprising control valves for
22 controlling the fluid pressure for actuating the valves
23 in said conduits, a lever in said master unit for
24 successively opening said master control valves, and
25 means in said unit responsive to fluctuations in the
water level in the boiler for rocking said lever."

23 On April 6, 1940, plaintiff filed an amendment in his application
24 Serial No. 44,988 reciting in part, as follows:
25

1 "Cancel all claims except Claim 14 and Applicant reserves
2 the right to amend the cancelled claims and make them
3 the subject matter of divisional applications."

4 On December 5, 1940, plaintiff, in requesting delay in issuance
5 of patent No. 2,233,395, upon his application Serial No. 44,988, stated,
6 in part, as follows:

7 "At this time we have another application pending, which
8 is a partial division of this application, but we have not
9 quite completed it for filing yet.

10 "We would, therefore, like to have the publication of
11 this patent (application No. 44,988) held ninety
12 days, or the limit for getting this out."

13 With respect to said claim 15, the Patent Office Examiner had,
14 on May 7, 1938, made the following statements in plaintiff's application
15 Serial No. 44,988:

16 "Claims 15 to 17 stand rejected on House in view of
17 Fulton as urged in connection with claims 1 to 5.
18 These are organization claims. Therefore, the
19 examiner does not consider that specific features
20 of appellant's valve construction are germane to the
21 invention claimed. The examiner has held that any
22 novelty in appellant's valve construction per se is
23 subject matter for separate applications."

24 Alva G. Blanchard
25 Plaintiff, pro se

E. L. Reynolds, Solicitor,
United States Patent Office,
Attorney for Defendant

1 Filed May 23, 1955

2 ADDITIONAL STIPULATION

3
4 The above parties hereby further stipulate and agree that as
5 filed on May 28, 1938, plaintiff's application Serial No. 210,585, upon
6 which patent No. 2,199,611 was granted on May 7, 1940, contained an ori-
7 ginal claim numbered 1, reading as follows:

8 "A housing having an opening, a plug in said opening,
9 a plurality of outlet passages through said plug, a
10 valve in each of said passages, a valve operating
11 lever fulcrumed on said plug and extending into said
12 housing, a float on the inner end of said lever,
13 and connections between said lever and each of said
14 valves whereby said valves or opened one at a time
15 in sequence, responsive to the downward movement
16 of said float."

17 In his initial action dated July 7, 1938, the Patent Office examiner
18 rejected said claim as substantially met by each of the following patents:

19 Humphrey	796,516	Aug. 8, 1905
20 Wright	668,302	Feb. 19, 1901

21 On September 9, 1938, plaintiff amended said claim to the form
22 in which it appears as claim 1 of said patent, stating:

23 "It is now thought that Claim 1 has been sufficiently
24 amended to show that it is not now broad enough to
25 include Humphrey and Wright."

Alva G. Blanchard
Plaintiff, pro se

E. L. Reynolds, Solicitor,
United States Patent Office,
Attorney for Defendant.

Filed July 26, 1955

MEMORANDUM OF COURT

Morris, J. This is a proceeding under Title 35, Section 145, U. S. C. (formerly Section 4915, Revised Statutes), for a determination that a patent should issue on claims 1, 2 and 3 in plaintiff's application for a patent, Serial Number 581,373, filed March 7, 1945, for apparatus in connection with the operation of valves in outlets for steam boilers. The defendant asserts that a patent on such claims should not issue in that they are not patentable over Patent No. 2, 199, 611, issued May 7, 1940 to the plaintiff and, therefore, would constitute double patenting. The defendant also asserts that the claims here involved are not patentable over Patent No. 683,021, issued to Clark, et al. (1901), Patent No. 458,794, issued to McLaughlin (1891), and Patent No. 7,6767, issued to Singleton (1877). These last three references were not cited in the Patent Office, but are asserted as authorized by the case of American Steel and Wire Company of New Jersey v. Coe, 70 App. D. C. 138 F. (2d) 17.

There can be no serious question that the claims here involved are generic claims, of which the claims in Patent No. 2,199,611 are specie claims. It is urged, however, by plaintiff that the three claims here involved are substantially the same generic claims as claim No. 15 in his application, Serial Number 44,988, filed October 14, 1935, upon which Patent No. 2,233,395, issued to plaintiff March 4, 1941, on certain other claims. Pending final action on that application, plaintiff, on April 6, 1940, when it became subject of an amendment to the application, cancelled all claims,

1 except claim 14, stating that "applicant reserves the right to amend the
2 cancelled claims and make them the subject matter of divisional applica-
3 tions." On February 20, 1941, plaintiff filed an application, Serial Num-
4 ber 379,822, which was co-pending with his application, Serial Number
5 581,373, from March 7, 1945 until it issued as Patent No. 2,395,212 on
6 February 19, 1946, in which were included claims 8, 9 and 10 that are
7 in substance claims 1,2 and 3 in the instant suit. It will thus be seen that,
8 from the date of the cancellation of claim No. 15, which the plaintiff in-
9 sists is the progenitor of his present claims, there was no assertion by
10 the plaintiff of generic claims 8, 9 and 10, which are asserted to be pro-
11 genitors of the instant claims until February 20, 1941, although patent
12 on the specie claims had issued after the cancellation May 7, 1940 and
13 prior to the reassertion of the generic claims similar to the ones here in-
14 volved.

15 The law seems to be well settled that no patent on an application with
16 generic claims may issue subsequent to the grant of a patent on claims
17 to one of the included species, unless the generic claims be introduced
18 into the application prior to the issuance of the species patent. The con-
19 tention of the plaintiff is that his reservation of an intention to amend the
20 cancelled claims and make them the subject of divisional applications
21 kept such claims alive notwithstanding such cancellation.

22 Rule 44 of the Patent Office provides:

23
24 A reservation for a future application of subject dis-
25 closed, but not claimed, in a pending application will
not be permitted in the pending application.

1 The plaintiff contends that this rule has no application to subject matter
2 which is not only disclosed, but which is claimed, but he loses sight of
3 the fact that, after cancellation of the claim, the subject matter was dis-
4 closed and not claimed, and indeed it was not claimed until after the spe-
5 cies patent issued. In this situation, it is clear that a patent cannot now
6 be issued on such generic claims.

7 The plaintiff insists that the claims here involved are patentable over the
8 three references cited, in addition to his own patent, constituting the prior
9 art in that the claims here involved include elements not present in each
10 of the references cited. It seems, however, that such patents do have
11 elements which perform the functions of the elements in plaintiff's claims,
12 and do preclude the issuance of patents on such claims.

13 For the reasons stated, the relief sought by the plaintiff cannot be granted.
14 Counsel will prepare and submit appropriate findings and order to carry
15 this decision into effect.

16 J. W. Morris
17 Judge

18
19 Filed Aug. 3, 1955

20 MOTION FOR NEW TRIAL

21
22 This is a motion for a new trial under Rule 59 of the Federal Rules of
23 Civil Procedure. Alva G. Blanchard, Plaintiff, moves the Court to set
24 aside the verdict for Defendant, and judgment entered thereon and grant
25 Plaintiff a new trial for the following reasons:

1 1. The Court erred in its ruling that Plaintiff's
2 application for Patent, Serial No. 581,373, filed
3 March 7, 1945, is not patentable over Patent No.
4 458,794 issued to McLaughlin (1891), Patent No.
5 683,021 issued Clark et al (1901), or over Patent No.
6 7,767 issued to Singleton (1877). These three patents
7 combined do not have the necessary elements, either
8 individually, or in combination, sufficient to duplicate
9 Plaintiff's device, either physically or in performance.
10 Plaintiff wishes the opportunity to introduce the
11 testimony of expert witnesses to substantiate this
12 position.

13
14 2. The Court erred in ruling that Rule 44 of the
15 Patent Office is applicable to this case. Plaintiff
16 cancelled the claims containing the subject matter
17 of this pending application at the express request of
18 the Patent Office, and with the understanding that
19 the claims cancelled were to be the subject of divi-
20 sional applications. Plaintiff can substantiate this
21 claim by testimony which will prove that the dis-
22 puted claims were also both disclosed and claimed
23 prior to the issuance of the species patent, and the
24 so-called cancellation was so worded that it could
25 not be an absolute cancellation except on the issue

1 of the patent in that application. And before this
2 patent issued, a new application containing the sub-
3 stance of Claim 1, 2 and 3 as Claims 8, 9 and 10
4 was filed, the effect of which was generic claims
5 filed in the original application and continuously
6 prosecuted until the present case, and therefore
7 allowable in the present application.

8
9 Plaintiff accordingly prays that the judgment rendered be set aside and a
10 new trial granted for the taking of testimony to substantiate Plaintiff's
11 position.

12 Alva G. Blanchard
13 Plaintiff.

14 Filed Aug. 22, 1955

15 JUDGMENT

16
17 This action came on to be heard at the last term, and there-
18 upon upon consideration thereof, it is this 18th day of Aug., 1955
19 ADJUDGED that the complaint be and it is hereby dismissed on the merits,
20 with costs against plaintiff.

21 J. W. Morris
22 Judge
23
24
25

1 Filed Aug. 29, 1955

2 FINDINGS OF FACT

3
4 1. This is a civil action brought under the provisions of 35 U. S. C.
5 (1952) 145, in which plaintiff, as the applicant in an application for patent
6 entitled "Automatic Control Mechanism for Pressure Vessels," Serial
7 No. 581,373, filed March 7, 1945, sought to have the Court authorize the
8 issuance to him of a patent containing claims 1, 2, and 3 of that applica-
9 tion.

10
11 2. Conformably with findings of the the examiner and the Board of Ap-
12 peals, defendant contended at the trial that claims 1, 2, and 3, in suit, are
13 unpatentable to plaintiff for double patenting in view of issued claims of
14 plaintiff's own patent, No. 2,199,611, granted May 7, 1940. Defendant
15 additionally then contended that the same claims are unpatentable in view
16 of each of the following patents, which were cited and proffered by defen-
17 dant in his answer, and were received and considered by the Court:

18

<u>Patentee</u>	<u>Patent No.</u>	<u>Date of Grant</u>
19 Singleton	Re. 7,767	June 26, 1877
McLaughlin	458,794	Sept. 1, 1891
20 Clark	683,021	Sept. 24, 1901

21

22 3. Stipulations were presented at the trial wherein the parties agreed
23 that the facts therein set forth might be accepted as established for pur-
24 poses of review by the Court of the rejection below on double patenting.

25 4. Claims 1, 2, and 3, in suit, are generic claims. In essentially their

1 present form, they were included in plaintiff's application, Serial No.
2 581,373, as filed on March 7, 1945. Plaintiff had, however, on February
3 20, 1941, filed a co-pending application, Serial No. 379, 822, in which
4 were included claims 8, 9, and 10, that are in substance the same as claims
5 1, 2 and 3. Thus, plaintiff, in effect, submitted claims 1, 2, and 3 for
6 Patent Office consideration and sought a patent containing them as of
7 February 20, 1941.

8
9 5. As of the earlier date of May 7, 1940, plaintiff had been granted pat-
10 ent No. 2,199,611, with species claims 1 to 5. These patent claims define
11 one of the species covered by generic claims 1, 2, and 3, in suit.

12 6. Without the presentation on or before May 7, 1940, of any claim the
13 same insubstance as generic claims 1, 2, and 3, in suit, in another appli-
14 cation of plaintiff, co-pending with his application, Serial No. 210,585,
15 filed May 28, 1938, upon which his patent No. 2,199,611 was granted, and
16 co-pending with plaintiff's application, Serial No. 379,822, and continued
17 prosecution of such a claim until February 20, 1941, claims 1, 2, and 3
18 are barred by double patenting.

19
20 7. Original claim 15 of plaintiff's application, Serial No. 44,988, which
21 was filed on October 14, 1935, and was pending until patent No. 2,233,395
22 was issued thereon on March 4, 1941, is not the same in substance as gen-
23 eric claims 1, 2, and 3, in suit. Moreover, that claim effectively was can-
24 celled from that application by an amendment therein dated April 6, 1940.

25 8. Plaintiff did not, by alleging in his amendment of April 6, 1940,

1 "Applicant reserves the right to amend the cancelled claims and make
2 them the subject matter of divisional applications," keep claim 15 alive
3 until the filing on February 20, 1941, of his application, Serial No. 379,822;
4 under Rule 44 of the Rules of Practice in the United States Patent Office,
5 as in force on April 6, 1940, the attempted reservation as to the subject
6 matter of cancelled claim 15 was a nullity.

7
8 9. Rule 44 has application to the subject matter of claim 15. Upon
9 cancellation of that claim on April 6, 1940, the subject matter thereafter
10 was disclosed but not claimed in plaintiff's application, Serial No. 44,988.
11 This subject matter was not claimed until the filing by plaintiff on Febru-
12 ary 20, 1941, of his application, Serial No. 379,822, which was after plain-
13 tiff's patent, No. 2,199,611, had been granted on May 7, 1940.

14 10. Each of generic claims 1, 2 and 3, in suit, is unpatentable for double
15 patenting in view of the species claims of plaintiff's patent, No. 2,199,611,
16 granted May 7, 1940.

17
18 11. Each of claims 1, 2, and 3, in suit, is readable term for term on each
19 of the cited patents to Singleton, McLaughlin, and Clark. Such patents
20 have elements which perform the functions of the elements in plaintiff's
21 claims, and preclude the issuance of a patent on such claims.

22 12. Each of claims 1, 2, and 3, in suit, is unpatentable as met by each
23 of the cited patents to Singleton, McLaughlin and Clark.

24
25 CONCLUSIONS OF LAW

1 1. Patents not cited in the Patent Office may be received and considered
2 at the trial of a civil action brought under the provisions of 35 U. S. C.
3 (1952) 145.

4 2. No patent on an application with generic claims may issue subsequent
5 to the grant of a patent with claims to one of the included species, unless
6 the generic claims be introduced into the application prior to the issuance
7 of the species patent.

8 3. The doctrine that generic claims must be pressed prior to the is-
9 suance of a patent with species claims, contemplates not only timely pre-
10 sentation of the generic claims, but, additionally, their continued prosecu-
11 tion.

12 4. Rule 44 of the Rules of Practice in the United States Patent Office,
13 as in force on April 6, 1940, set forth that "A reservation for a future
14 application of subject matter disclosed but not claimed in a pending appli-
15 cation will not be permitted in the pending application."

16 5. Plaintiff is not entitled to a patent containing any of claims 1, 2, and
17 3 of his application, Serial No. 581,373, in suit.

18 6. The complaint should be dismissed as to all the claims in suit.

19
20 J. W. Morris
Judge

21 Filed Oct. 17, 1955

22 ORDER DENYING MOTION FOR NEW TRIAL

23 Plaintiff's motion for new trial and memoranda relative thereto of
24 plaintiff and defendant having been fully considered, said motion is hereby
25 denied.

J. W. Morris
Judge

Filed Oct. 17, 1955

NOTICE OF APPEAL

Notice is hereby given that Alva G. Blanchard, plaintiff above named, hereby appeals to the United States Court of Appeals for the District of Columbia from the final judgment dismissing the complaint signed and entered in this action on August 18, 1955.

Alva G. Blanchard
Plaintiff

Filed Nov. 22, 1955

MOTION AND FIAT OF JUDGE MORRIS TO TRANSMIT ORIGINAL PAPERS

In order to save time and expense of making copies of pleadings and proceedings before this Honorable Court, plaintiff respectfully moves that the original record and exhibits be transmitted as the record on appeal to the United States Court of Appeals for the District of Columbia.

Respectfully submitted,

Alva G. Blanchard
Plaintiff

Entered Dec 9, 1955

Motion to transmit original papers in lieu of copies on appeal granted
(fiat) Morris, J.

Harry M. Hull, Clerk

Filed Dec. 5, 1955

DESIGNATION OF RECORD

Alva G. Blanchard, Plaintiff, herewith designates for the second time,

1 the Record on Appeal, the first time being by letter dated October 26,
2 1955 directed to the Clerk of the United States District Court for the Dis-
3 trict of Columbia. Plaintiff respectfully requests that he be given the
4 benefit of the date October 26, 1955 as filing date of the Designation of
5 Record.

6 Plaintiff designates the following portions of the record before this
7 Court for review by the Court of Appeals:

- 8 1. Bill of complaint.
- 9 2. Answer to complaint.
- 10 3. Stipulation dated May 23, 1955.
- 11 4. Additional stipulation dated May 23, 1955.
- 12 5. Memorandum by Judge James W. Morris dated
13 July 26, 1955.
- 14 6. Judgment dated August 18, 1955.
- 15 7. Motion for new trial.
- 16 8. Notice of appeal.
- 17 9. Plaintiff's exhibit #1, a certified copy of
18 application S. N. 581,373 of March 7, 1955.
- 19 10. Plaintiff's exhibit #2, a chronological chart,
20 showing background of application S. N. 581,373
21 to the original application S. N. 44,988 filed
22 October 14, 1935.
- 23 11. Plaintiff's exhibit #3, a copy of the 3 rejected
24 claims, 1, 2, and 3 of application S. N. 581,373
25 of March 7, 1945.

12. Plaintiff's exhibit #4, an element chart,
showing the elements of the 3 rejected claims.

Alva G. Blanchard
Plaintiff.

Filed Dec. 9, 1955

ADDITIONAL DESIGNATION OF CONTENTS OF RE-
CORD ON APPEAL UNDER RULE 75(a)

Appellee, Robert C. Watson, Commissioner of Patents, hereby designates the following additional portions of the Record, Proceedings, and Evidence to be contained in the record on appeal:

1. Motion To Amend Complaint brought on or about June 22, 1953.
2. Order Amending Complaint entered July 8, 1953.
3. Findings of Fact and Conclusions of Law signed August 18, 1955.
4. Order denying Motion for a New Trial signed October 17, 1955.
5. U. S. Patent to Blanchard, No. 2,199,611, granted May 7, 1940.
6. U. S. Reissue Patent to Singleton, Reissue No. 7,767, reissued June 26, 1877.
7. U. S. Patent to McLaughlin, No. 458,794, Granted September 1, 1891.
8. U. S. Patent to Clark, No. 683,021, Granted Sept. 24, 1901.

- 1 9. Prints of drawings of plaintiff's application,
2 S. N. 581,373, filed March 7, 1945.
3 10. Examiner's Statement, Dated May 22, 1952, in
4 said application.
5 11. Decision of the Board of Appeals, rendered
6 November 28, 1952, in said application.
7 12. This Additional Designation.

8 Respectfully submitted,

9 C. W. Moore.
10 Solicitor, U. S. Patent Office,
 Attorney for Appellee.

11 Filed Dec. 9, 1955

12 CLERK'S CERTIFICATE

13 BE IT REMEMBERED, that in the United States District Court for the Dis-
14 trict of Columbia, at the City of Washington, in said District, at the times
15 hereinafter mentioned, the following papers were filed and proceedings
16 had, in the above entitled case, to wit:

17
18 I, HARRY M. HULL, Clerk of the United States District Court for the Dis-
19 trict of Columbia, do hereby certify the foregoing pages numbered 1 to 33,
20 inclusive to be the original papers designated as the record on appeal in
21 the case of ALVA G. BLANCHARD, Plaintiff, vs. ROBERT C. WATSON,
22 Defendant, CIVIL ACTION NO. 2390-53, said originals being transmitted
23 to the United States Court of Appeals for the District of Columbia Circuit
24 pursuant to an order of this Court dated December 9, 1955, except the
25 following:

1 Items 9, 10, 11, 12, of the Designation, and Items 5, 6, 7, 8, 9, 10, 11, of
2 the Counter designation, Exhibits, are not included in this transcript for
3 the reason they are being transmitted under a separate certificate.
4

5 IN TESTIMONY WHEREOF, I here-
6 unto subscribe my name and affix
7 the seal of said Court, at the City of
8 Washington, in said District, this
9 _____ day of December, 1955.

10 Harry M. Hull, Clerk.
11
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25

May 7, 1940.

A. G. BLANCHARD

J. A. 28
2,199,611

VALVE OPERATING STRUCTURE

Original Filed Oct. 14, 1935

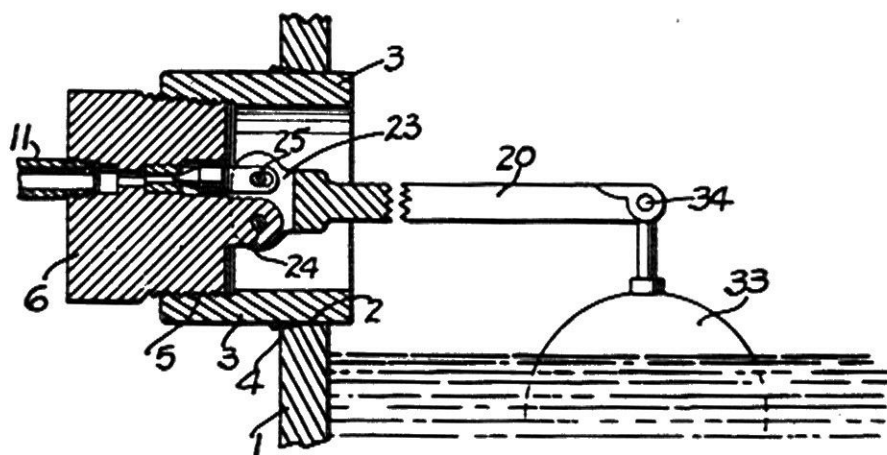


Fig. 1.

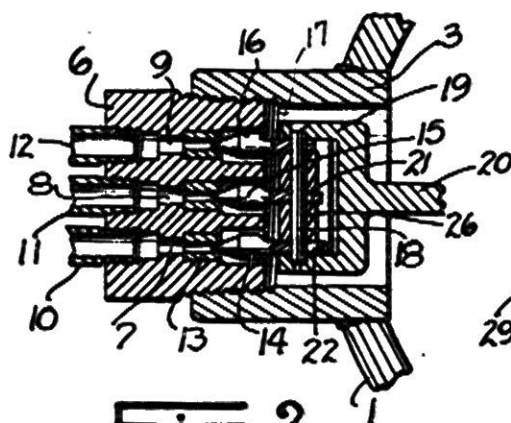


Fig. 2.

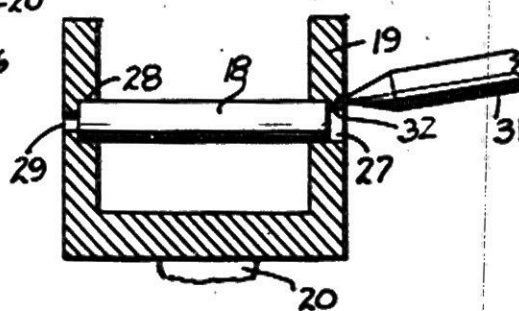


Fig. 3.

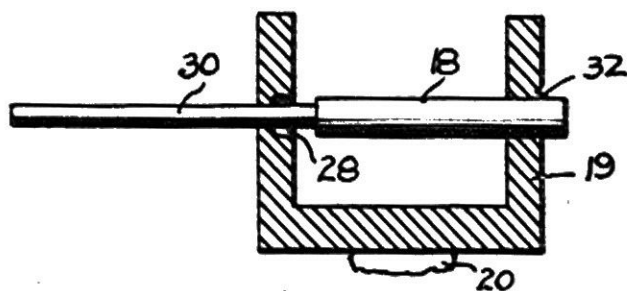


Fig. 4.

Inventor
Alva G. Blanchard

UNITED STATES PATENT OFFICE

2,199,611

VALVE OPERATING STRUCTURE

Alva G. Blanchard, Shreveport, La.

Original application October 14, 1935, Serial No. 44,988. Divided and this application May 28, 1938, Serial No. 210,585

5 Claims. (Cl. 137-104)

The invention relates to the structure of a valve operating device.

While the device is capable of general application I have illustrated it particularly in connection with the operation of valves in outlets from steam boilers. It is sometimes desirable to provide a plurality of steam outlets from the boiler through which steam may be directed to operate regulators, fuel or water valves, and the like. Such a construction is usually operated in response to the level of the water in the boiler and my device is so illustrated.

It is an object of the present invention to provide means in connection with a single lever to operate a plurality of valves at different stages relative to the height of the water in the boiler.

It is desired that the valves be opened in a predetermined sequence so that the steam may be allowed to pass through one line first and then through other lines in a predetermined sequence.

The invention also involves a structure which is strong and compact and easily assembled in position.

The invention further involves the structure of the valve operating means through which the valve operating pin is held in position with a minimum amount of labor and expense.

The invention will be better understood in connection with the description of the drawing herewith in which

Fig. 1 is a vertical section through a valve assembly shown as connected with the float operated lever.

Fig. 2 is a horizontal section through the assembly disclosed in Fig. 1, the float being omitted.

Fig. 3 is a transverse detail of the yoke showing the manner in which the valve operating pin is secured in position.

Fig. 4 is a view similar to Fig. 3 showing the manner in which the pin may be removed when desired.

The present application is a division of my co-pending application Serial No. 44,988, filed October 14, 1935, for Safety appliance for boilers.

In carrying out my invention I contemplate forming in the wall 1 of the steam boiler an opening 2 formed to receive a collar 3 adapted to be welded in position in said opening, as shown at 4. The collar 3 is threaded at its outer end at 5 to receive a plug 6.

The plug 6 is formed to screw within the opening in the collar 3 and to provide outlets therethrough for the steam from the boiler. There may be two or more of these openings and

in the present embodiment I have shown three outlet passages through the plug, said outlets 7, 8 and 9 having at their outer ends steam conducting pipes, 10, 11 and 12, respectively. It will be understood that said pipes may conduct the steam to any steam operated device.

At the inner ends of the passages 7, 8 and 9 are inserted valve seats 13. Each valve seat is adapted to cooperate with an adjacent valve, the valves 14, 15 and 16 cooperating with the outlets 7, 8 and 9, respectively. Each valve has a rearwardly extending valve stem 17 with an opening therein to receive a cross pin 18 mounted within a yoke 19 on the valve operating lever 20. In order that the valves may be operated in a predetermined sequence the openings through which the cross pin 18 passes are of different lengths in the different valve stems. I have shown the stem of the valve 16 as providing a close fit about the pin 18. In the stem of the valve 15, however, the opening is elongated, as shown at 21, and the opening in the stem of the valve 14 is elongated still more, as shown at 22. It will be obvious from this construction that when the lever is operated to move the valves the valve 16 will be moved first and at a predetermined interval thereafter the valve 15 will be opened and at a still later interval the valve 14 will open.

The lever 20, which is employed to operate the valves has at its end adjacent the valve a yoke 23. The lower end of the yoke engages with a pivot pin 24 which forms a fulcrum for the lever and allows the swinging of the lever in a vertical plane. At a point above the fulcrum 24 the cross pin 25 is mounted so as to engage through the openings in the valve stem as previously described. Between adjacent stems I provide spacers 26 which assist in maintaining the valves spaced equally along the pin 18.

With reference to Figs. 3 and 4, I have shown how the pin 18 may be secured in position in the yoke of the lever with a minimum consumption of time and labor. The yoke 19 is formed with an opening 27 at one side and on the opposite side there is a recess 28 which extends only part way through the wall of the yoke. At the end of the recess, however, there is a small opening 29 through which a punch 30 may be inserted to drive the pin from its mounting. In order to hold the pin in position with one end in the recess 28 I upset the metal about the opening 27 with a chisel or other instrument 31 so that it will prevent longitudinal movement of the pin from its seat. It will be obvious, however, that this upset

projection shown at 32 may be driven from its position holding the pin in place by the punch 38 when it is desired to remove the pin.

The lever 28 is operated by a float 33 in the present embodiment, said float having a pivotal connection at 34 with the end of the lever.

In the operation of my device it will be obvious that the valves will be opened in response to predetermined levels of the water in the boiler. When the water is above a certain level all of the valves will be closed, but as the level is depressed first one will open and then the next, and finally the third. It will be seen, however, that if the level of the water is not lowered beyond a certain point all of the valves need not open, but each valve will open when the proper level of the float in the boiler is reached.

My invention is exceedingly simple. It will be obvious that the plug 6, upon which the valve structure is mounted, is one unitary device and that the removal of the plug will allow access to all of the valves in an obvious manner. The device is simple and strong in construction and will not easily get out of order or fail to function.

I claim:

1. A housing, a plurality of outlet passages through said housing, a valve in each of said passages, said valves having slots of varying lengths in one end to determine the order in which they are opened, a pin through said slots operated by a lever fulcrumed within said housing, a float on the end of said lever, whereby said valves are opened one at a time in sequence, responsive to the downward movement of said float.

2. A housing having an opening, a plug in said opening, a plurality of outlet passages through said plug, a valve in each of said passages, a valve operating lever fulcrumed on said plug and ex-

tending into said housing, a float on the inner end of said lever, a cross pin on said lever, stems on said valves having openings therein to receive said cross pin, said valve stem openings being of varying length, whereby the downward movement of said lever will cause said pin to engage said valve stems to open said valves in sequence, one after the other.

3. A housing having an opening, a plug in said opening, a plurality of outlet passages through said plug, a valve in each of said passages, a valve operating lever fulcrumed on said plug and extending into said housing, a float on the inner end of said lever, a yoke on said lever, a cross pin in said yoke, stems on said valves having slotted openings therein to receive said cross pin, the openings in each stem being of a length different from that of the others, whereby said valves are timed to be opened by said lever arm in a predetermined order.

4. A plug adapted to close a fluid outlet and having a plurality of fluid passages therethrough, a valve in each of said passages, a float operated lever fulcrumed upon said plug, a yoke on said lever, a cross pin on said yoke, valve stems on said valves with slotted openings therein to be engaged by said pin, said openings being of different lengths for the purpose described.

5. A plug adapted to close a fluid outlet and having a plurality of fluid passages therethrough, a valve in each of said passages, a float operated lever fulcrumed upon said plug, a pin carried by said lever, stems on said valves having openings therein through which said pin extends, the opening in each stem being of different length from the others and means to secure said pin in said lever.

ALVA G. BLANCHARD.

B. R. SINGLETON,

Assignor by mesne assignments to H. S. Hopkins & W. McCully.

LOW-WATER ALARM AND FIRE-EXTINGUISHER.

No. 7,767.

Reissued June 26, 1877.

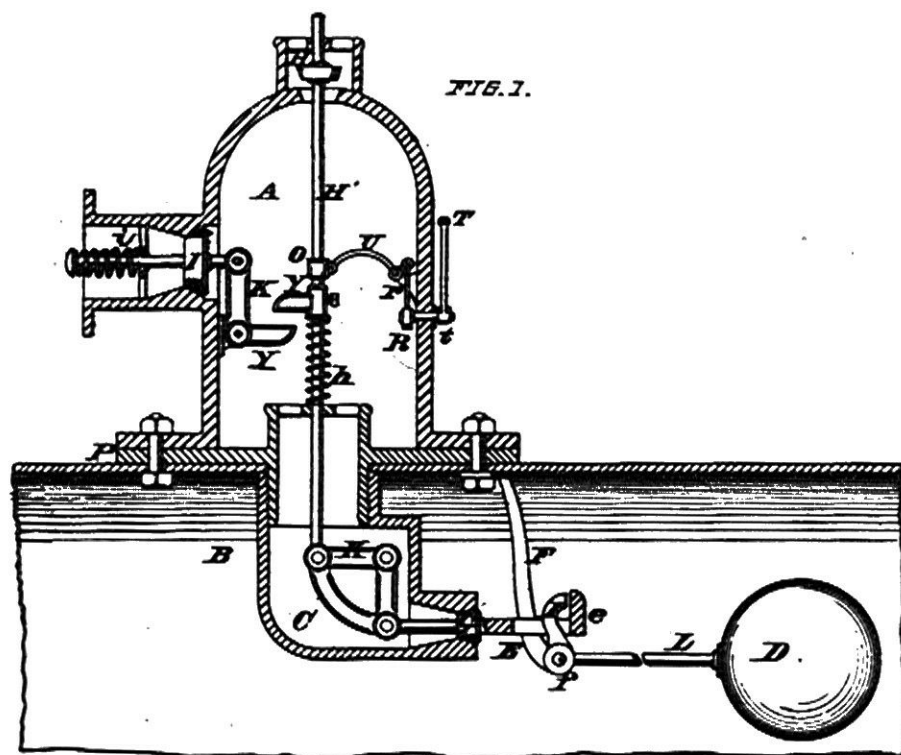
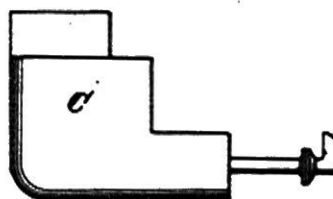
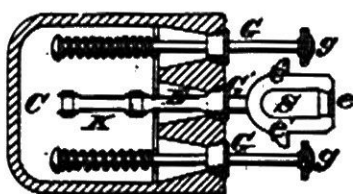
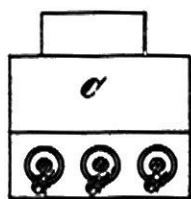


FIG. 3.

FIG. 2.

FIG. 4.



WITNESSES.

Paul Bakewell

Saml. S. Boyd.

INVENTOR.

Benjamin R. Singleton

By Chas. D. Moody,
his atty.

UNITED STATES PATENT OFFICE.

BENJAMIN R. SINGLETON, OF HIGHLAND, ILLINOIS, ASSIGNOR, BY MESNE ASSIGNMENTS, TO HENRY S. HOPKINS AND WILLIAM McCULLY.

IMPROVEMENT IN LOW-WATER ALARM AND FIRE-EXTINGUISHER.

Specification forming part of Letters Patent No. 123,795, dated February 20, 1872; reissue No. 7,767, dated June 26, 1877; application filed March 3, 1877.

To all whom it may concern:

Be it known that I, BENJAMIN R. SINGLETON, formerly of St. Louis, Missouri, and now of Highland, Madison county, Illinois, have made new and useful Improvements in Steam-Boiler Low-Water Alarms and Fire-Extinguishers, of which the following is a full, clear, and exact description, reference being had to the annexed drawing, making part of this specification, in which—

Figure 1 is a vertical section, showing the invention in position; Fig. 2, a horizontal section taken through that part of the invention termed the "gage-box;" and Figs. 3 and 4, respectively, a front and a side elevation of the latter.

The same letters in the various figures denote the same parts.

My invention relates to an improvement in that class of steam-boiler low-water alarms wherein the movement of a float is the cause of the operation of the alarm. It further has reference to the means for extinguishing or checking the boiler-fire, substantially as herein set forth, and to the provision for readily testing the alarm and extinguisher, and for operating an auxiliary alarm.

Referring to the annexed drawing, A represents a dome of a suitable size and shape—say, eight inches in diameter and twelve inches in height—that is attached to the boiler B. C represents what I term the "gage" or "valve box." It is arranged within the boiler, in the steam-space thereof, and underneath or opposite the dome, and the boiler-shell is perforated or removed between the box and dome to establish communication between them, and to provide for the movement of the valve-stem, as hereinafter explained.

The mode of fixing the box C in position is as shown. A plate, P, that is interposed between the dome A and boiler-shell, is provided with a boss, p, that projects downward through the perforation in the boiler-shell between the dome and gage-box into the boiler, and is furnished with a thread to enable the gage-box to be screwed thereon.

The box C is of suitable form, and is inclosed from the boiler, saving that it is provided with the valves G' G' G, that can be

opened to admit steam from the boiler into the box. The central valve G' is attached to a rod, E.

D represents a float, that rises and falls with the water in the boiler. It is attached to a lever, L, that is pivoted at f to a bracket, F, so as to cause the downward movement of the float to bring the lever L against the rod E, drawing it outward from the gage-box and opening the valve G'.

The mode of bringing the lever L to bear upon the box E is by means of an arm, L', with which the lever L is provided. The bar E is slotted to receive the arm L', and its inner end is enlarged to form a projection, e, against which the upper end of the arm L' strikes. The rod E, at its inner end, and which is within the gage-box, is pivoted to one arm of a bell-crank lever, K, that, in turn, is pivoted to the box C, and whose other arm is pivoted to a valve-stem, H', that extends thence upward into and through the dome A, and at its upper end furnished with a valve, H, that serves to open and close an opening in the dome leading to an alarm-whistle. (Not shown.) The stem is also provided with an arm, Y, arranged to come (as hereinafter explained) against and move the arm Y' of another bell-crank lever, K', whose other arm is pivoted to the stem of a valve I, that, in turn, serves to open and close a pipe that leads (only the upper end of this pipe is shown) to the boiler-furnace chamber, and so that steam can be discharged therefrom onto the fire. The valve I is seated in the direction shown, and a spring, i, aids in keeping it closed, saving when the crank K' is not moved.

There is another spring, h, arranged between the arm Y and the bearing p to aid in keeping the valve G' shut, saving when the latter is brought into use, and as follows: As the float D falls with the water in the boiler, the lever L draws against the rod E. This opens the valve G' and draws the rod H downward. The various parts are so adjusted as to open the valve G' before the arm Y comes in contact with the arm Y', and before the valve H is closed. Steam, being admitted into the box C and dome A, thence passes by the valve H to the alarm-whistle, operating the latter;

or, if desired, this steam may be conducted to a suitable pump to supply more water to the boiler. The sounding of the whistle is intended more especially as a primary warning; but if the water continues to fall the stem H' is drawn farther down, bringing the arm Y against the crank K' and opening the valve I . Steam then passes from the boiler through the box C , dome A , and pipe J , to the furnace-chamber of the boiler, checking and extinguishing the fire. The valves H and I are not, however, necessarily coactive, either being thoroughly operative, whether the other is in action or not. Therefore the valve H may be omitted from the construction without impairing the efficiency of the fire-extinguishing device, and in practice sufficient steam escapes through the dome to operate both the alarm and the extinguisher.

An additional feature of the improvement, and that can be used either as an auxiliary alarm, or as a means for testing the working condition of the invention generally, is shown in Fig. 1. O represents a sleeve attached to the stem H' , and connected to a rod, U , that, through a cam-rod, r , cam R , rock-shaft t , (that passes through the shell of the dome,) is connected with a lever, T , to which a rope, chain, or rod may be attached, and to bring the lever readily within reach. Now, as the stem H' descends the sleeve O is brought down with it, causing the lever T to move and sound a bell, gong, or other alarm. By moving the lever, on the other hand, motion may be transmitted from without the dome to the stem H' , and to the valves G' and I , testing the condition of the latter by the sounding of the whistle and the appearance of steam in the furnace-chamber.

Another feature of the improvement is shown in Figs. 2, 3, and 4, viz., the additional

valves $G G$. They serve to open and close additional openings from the boiler into the gage-box, and are operated by means of the bosses $e' e'$ on the rod e coming against the heads $g g$ on the stems of the valves. The arrangement is such as to open the various valves G' and $G G$ successively. Springs g' aid in closing the valves $G G$.

What I claim is—

1. The combination of the float D , bent lever L , slotted bar E , projections $e e'$, and valves $G G G'$, substantially as and for the purpose described.

2. The combination of the float D , lever L , bar E , bell-cranks $K K'$, valve-stem H' , valves H and I , and springs h and i , substantially as and for the purpose specified.

3. The combination of the float D , lever L , bar E , crank K , stem H' , sleeve O , levers or bars $U r$, cam R , shaft t , and lever T , substantially as and for the purpose described.

4. The combination of the lever T , shaft t , cam R , rod r , rod U , sleeve O , stem H' , arm Y , crank K , and valve I , substantially as described.

5. The combination of the float D , lever L , rod E , projection e , gage-box C , and valve G' , substantially as described.

6. The combination of the lever T , shaft t , cam R , rods $r U$, sleeve O , stem H' , and dome A , substantially as described.

7. The combination of the box C , plate P , bearing p , arm Y , valve G' , lever K , stem H' , and spring h , substantially as described.

8. The combination of the levers $K K'$, stem H' , arm Y , rod E , lever L , float D , and valve I , substantially as described.

BENJAMIN R. SINGLETON.

Witnesses:

JACOB E. SCHMITT,
F. M. KYLE.

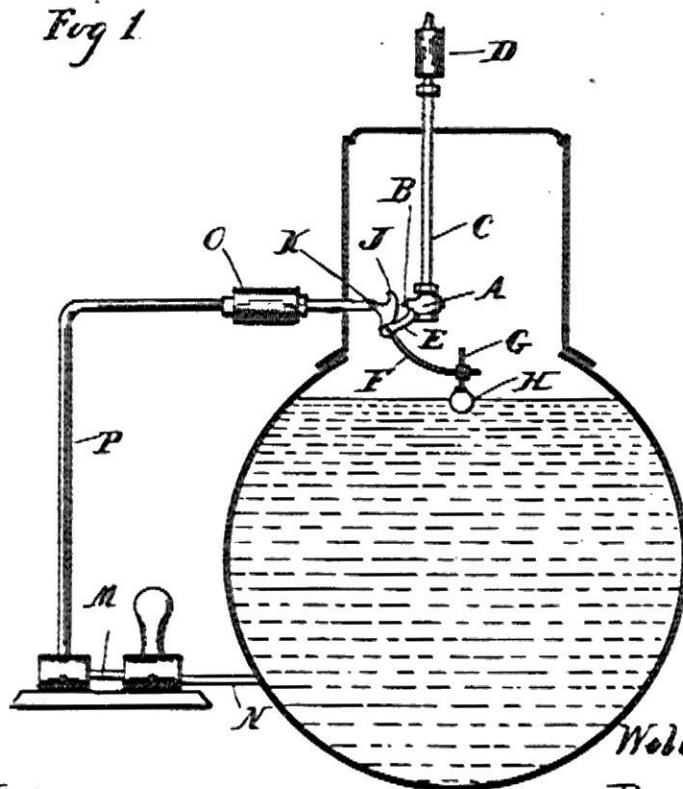
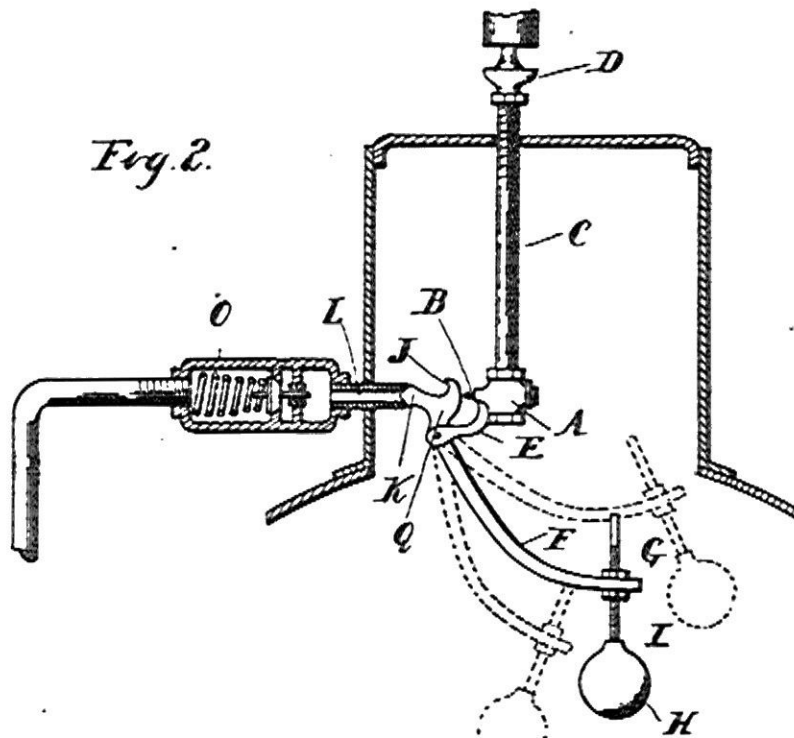
(No Model.)

W. D. McLAUCHLIN.
LOW WATER ALARM AND BOILER FEEDER.

J. A. 34

No. 458,794.

Patented Sept. 1, 1891.



Witnesses
A. L. Kabbie
P. M. Hullbert

Inventor
William D. McLauchlin
By *Thos. Sprague* Atty.

UNITED STATES PATENT OFFICE.

WILLIAM D. McLAUCHLIN, OF CORUNNA, MICHIGAN, ASSIGNOR OF ONE-HALF
TO AUSTIN PHILLIPS, OF SAME PLACE.

LOW-WATER ALARM AND BOILER-FEEDER.

SPECIFICATION forming part of Letters Patent No. 458,794, dated September 1, 1891.

Application filed April 1, 1891. Serial No. 387,310. (No model.)

To all whom it may concern:

Be it known that I, WILLIAM D. McLAUCHLIN, a citizen of the United States, residing at Corunna, in the county of Shiawassee and State of Michigan, have invented certain new and useful Improvements in Low-Water Alarms and Boiler-Feed Devices, of which the following is a specification, reference being had therein to the accompanying drawings.

This invention relates to new and useful improvements in boiler-feed and low-water alarm for steam-generators; and the invention consists in the peculiar construction of a float designed to open the whistle-valve on the lowering of the water beyond a predetermined point and to close the steam-supply pipe to the pump when the water has risen to the level desired to be maintained.

The invention further consists in the application to the steam-supply pipe of a spring-actuated valve set at such a tension that no steam will pass through unless it is of a sufficient pressure to operate the feed-pump.

The invention further consists in the arrangement, combination, and construction of the various parts, all as more fully herein-after described.

In the drawings, Figure 1 is a vertical section through a boiler, showing my invention applied thereto. Fig. 2 is a similar elevation, partly in section, showing the parts in their various positions.

A is a spring-actuated valve located in the steam-dome or in any other part of the steam-space of the boiler and adapted to be opened by pressure upon the pin B. This valve is supported by the pipe C, passing through the shell of the boiler, at the upper end of which is secured the whistle D. Upon this valve is secured a bracket or arm E, to which is pivoted the float-valve lever F. This lever at its lower end is apertured to receive the stem G, secured to the upper end of the float H. This stem is screw-threaded, and the float can be transferred to any desired height by means of the lock-nuts I on opposite sides of the lever. This lever is provided with a valve-actuated arm J, so arranged that as the float lowers it will strike the pin B upon the valve and the whistle will be blown,

sounding an alarm to indicate that the water has lowered to a dangerous point. The alarm will continue sounding until the float again rises.

Upon the opposite side of the arm J is formed a valve K, adapted to open and close the steam-supply pipe L to the boiler-feed M, which is connected to the boiler by means of the pipe N. In this steam-supply pipe I arrange a spring-actuated valve O of any suitable construction, setting the spring of the valve so that it will not open until sufficient pressure has accumulated in the boiler to operate the pump M. The object of this valve is that as the pump is ordinarily set below the point at which the steam finds exit from the boiler the vertical portion P thereof would fill with water if steam were allowed to enter therein at a pressure less than sufficient to operate the pump.

It will be seen that the head Q of the lever having the arm J at one side and the valve K at the other is interposed between the pin B and the steam-supply pipe L.

In the ordinary operation of the device the steam will be admitted to the feed-pump more or less in proportion as the float-valve H rises or lowers, and when the water reaches the proper height that pipe will be entirely closed. In case the water becomes too low at any time the pipe L will be opened wide, and at the same time the weight of the float-valve and lever will operate the valve A and blow the whistle. By connecting the float directly to the valve A, I obviate the necessity of putting a bracket inside of the boiler.

What I claim as my invention is—

1. In a steam-boiler, the combination, with the boiler, of a steam-pipe leading out from the same, a feed-pump into which the pipe leads, a float-actuated lever for closing the steam-pipe, and a spring-actuated valve in the steam-pipe actuated by steam-pressure independent of the lever, substantially as described.

2. In a steam-boiler, the combination, with the boiler, of an alarm, a valve for the alarm, a steam-supply pipe leading from the boiler at a point opposite the valve, a float-actuated lever between the valve and pipe-opening for

opening and closing the same, a feed-pump
into which the steam-pipe enters, and a
spring-actuated valve in the steam-supply
pipe actuated by steam-pressure independ-
5 ent of the lever, substantially as described.

3. In a steam-boiler, the combination of an
alarm, a steam-pipe leading out from the
boiler, a valve for the alarm, and a float-act-
uated lever interposed between the valve and
10 steam-pipe, one side arranged to open the

steam-valve and its opposite side formed
into a valve for closing the steam-supply
pipe, substantially as described.

In testimony whereof I affix my signature in
presence of two witnesses.

WILLIAM D. McLAUCHLIN.

Witnesses:

S. M. HULBERT,
A. L. HOBBIE.

No. 683,021.

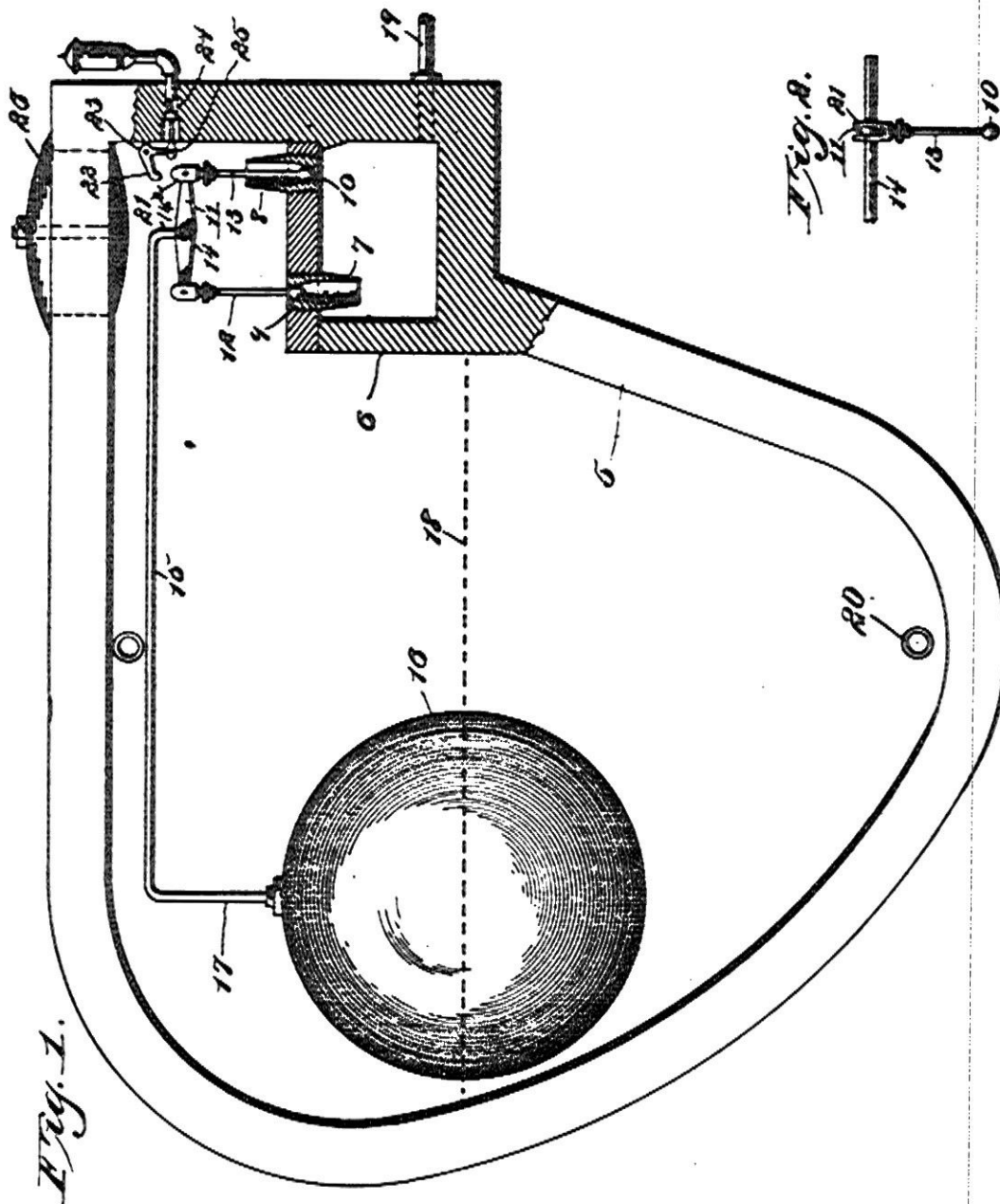
Patented Sept. 24, 1901.

O. E. & E. E. CLARK.
BOILER FEED REGULATOR.

(Application filed Dec. 2, 1899.)

(No Model.)

2 Sheets—Sheet 1.



WITNESSES

Louis D. Heinrichs
B. P. Funk

INVENTORS

Omar E. Clark
E. E. Clark
By Victor J. Evans
Attorney

No. 683,021.

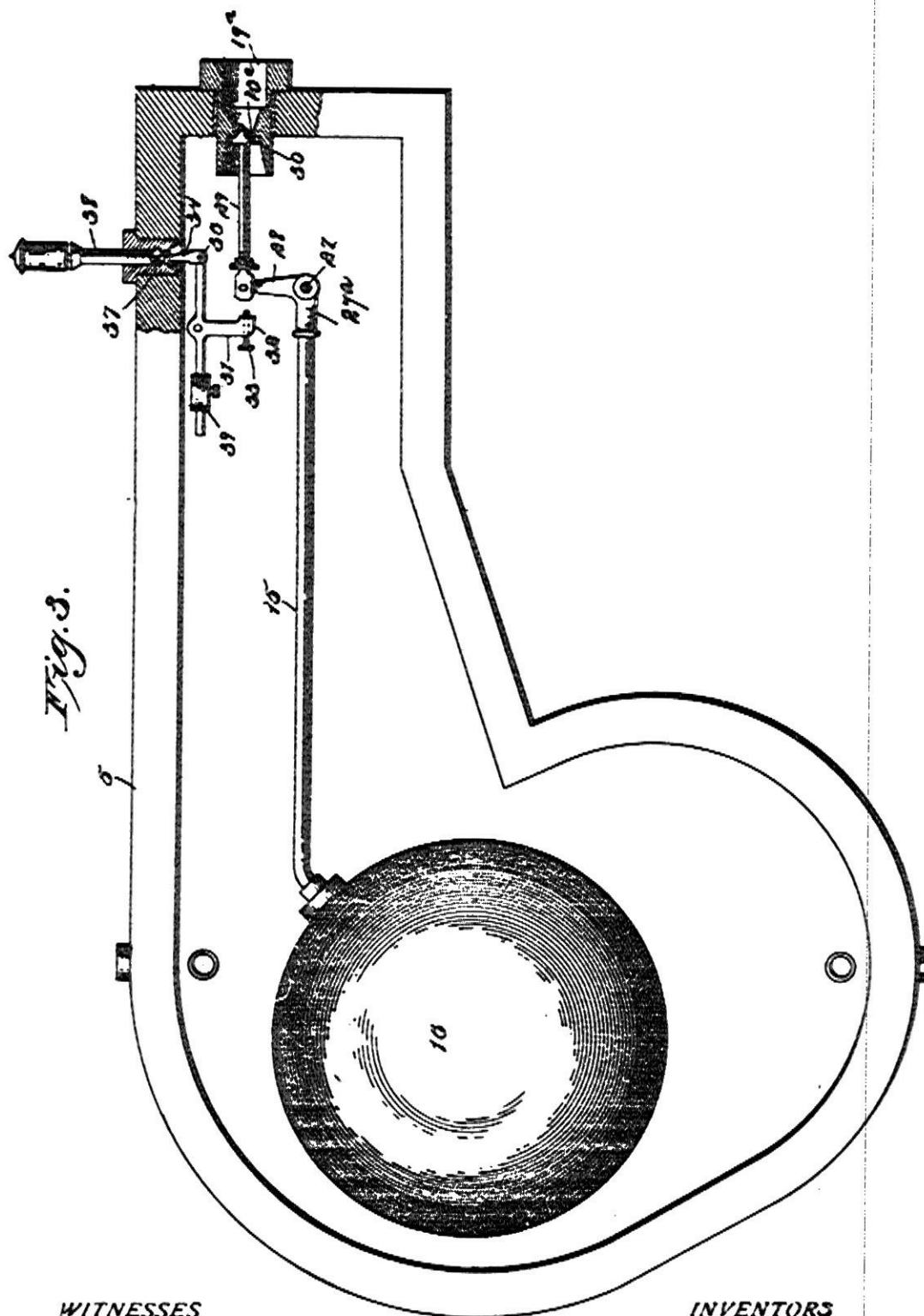
Patented Sept. 24, 1901.

O. E. & E. E. CLARK.
BOILER FEED REGULATOR.

(Application filed Dec. 2, 1899.)

(No Model.)

2 Sheets—Sheet 2



WITNESSES

Louis D. Heinrichs
B. F. Funk

INVENTORS

Omar E. Clark and
 Elsworth E. Clark
 By Victor J. Evans.
 Attorney

3 2

UNITED STATES PATENT OFFICE.

OMAR E. CLARK AND ELLSWORTH E. CLARK, OF VICKSBURG, MICHIGAN.

BOILER FEED-REGULATOR.

SPECIFICATION forming part of Letters Patent No. 683,021, dated September 24, 1901.

Application filed December 2, 1899. Serial No. 739,019. (No model.)

To all whom it may concern:

Be it known that we, OMAR E. CLARK and ELLSWORTH E. CLARK, citizens of the United States, residing at Vicksburg, in the county of Kalamazoo and State of Michigan, have invented certain new and useful Improvements in Boiler Feed-Regulators, of which the following is a specification.

This invention relates to steam-boilers, but more particularly to a low-water alarm and a feed device therefor; and it consists in certain novel features of construction, combination, and arrangement of parts in an apparatus of this character, which will be hereinafter more fully described, illustrated in the accompanying drawings, and set forth in the appended claims.

The objects of the invention are to provide a simple and effective means comprising a float-operated valve mechanism for letting on and cutting off the supply of steam to the injector-pump to maintain the water in the boiler at a predetermined level and to operate or control the whistle-valve when the water reaches a level below a predetermined point or the pump fails to work.

In the drawings, Figure 1 is a vertical transverse sectional view through a casing of approved construction, showing my invention applied thereto. Fig. 2 is a side elevation of the mandrel and valves; and Fig. 3 is a transverse section through a modified form of casing, showing a modified form of mechanism.

Referring now to the drawings by reference-numerals, 5 indicates a casing arranged on a steam-boiler, and in which is arranged a steam-chest 6, provided at its top with oppositely-disposed tapering valve-seats 7 and 8, in which are seated valves 9 and 10, respectively, pivotally connected to the superimposed lever 11 by means of the pendent valve-stems 12 and 13, which engage the respective ends thereof. Said lever is rigidly secured to the mandrel or shaft 14, journaled in suitable bearings and arranged in said casing. Projecting from said shaft 14 is a crank-arm 14^a, with which is connected a transversely-extending arm or rod 15, on the free end of which is a float 16, suspended from the depending portion 17 thereof and adapted to normally retain the valves heretofore referred to seated in their seats—that is, when the wa-

ter assumes a level indicated by the dotted lines 18, said lines indicating the level of the water under normal conditions. Should the water recede below that level, owing to its being generated into steam or from other causes, the float will drop down to said level and gradually withdraw the valves from their seats, allowing steam to enter the steam-chest from the dome of the boiler, and said steam will pass out through the outlet-pipe 19 to a suitable injector or steam-pump, (not shown,) which will be started thereby and supply the boiler with water through the inlet-pipe 20. As soon as the water reaches the desired level the float, being carried up with it, will close the valves 7 and 8 and the pump will be secured against working until the water recedes again. Should the water become too low or the pump fail to work, the projecting end 21 of the valve-stem 13 will contact with the depending finger 22 of the bell-crank lever 23, which will withdraw the valve 24, pivoted thereto at 25, from its seat and admit steam to the whistle, thus indicating the danger of an explosion. At the top of the casing, immediately over the mechanism above described, we have provided a manhole 26, whereby access may be gained to the interior of the casing and the parts cleaned or repaired.

In the modification, 5 indicates the casing or shell, provided with a steam-outlet 10^a, in which is a valve-seat 19^a. A shaft 27 is arranged in said casing, and projecting therefrom is a crank-arm 27^a, carrying an arm or rod 15, on the free end of which is secured the float 16, adapted to rise and fall with the level of the water. An upwardly-projecting arm 28 extends from the shaft 27, and pivoted thereto is a valve-stem 29, carrying at its free end the valve 30, adapted to be seated in the seat 26 by the action of the float. The alarm mechanism consists of a pivoted lever 31, having the depending finger 32 intermediate its ends and provided with a regulating-screw 33, designed to contact with the valve-stem 29 when the water is at a low level. The valve-stem 34 is pivoted at 36 to the lever 31 and carries a valve 37, designed to normally hold the whistle-tube 38 closed, which action is facilitated by the adjustable weights 39, slidably secured on the free end of said lever 31.

It will thus be seen that we have provided a neat and simple construction of feeder and alarm, and we would have it understood that the minor details of construction may be resorted to within the scope of the invention without departing from the spirit or sacrificing any of the advantages thereof.

Having thus described this invention, what we claim, and desire to secure by Letters Patent, is—

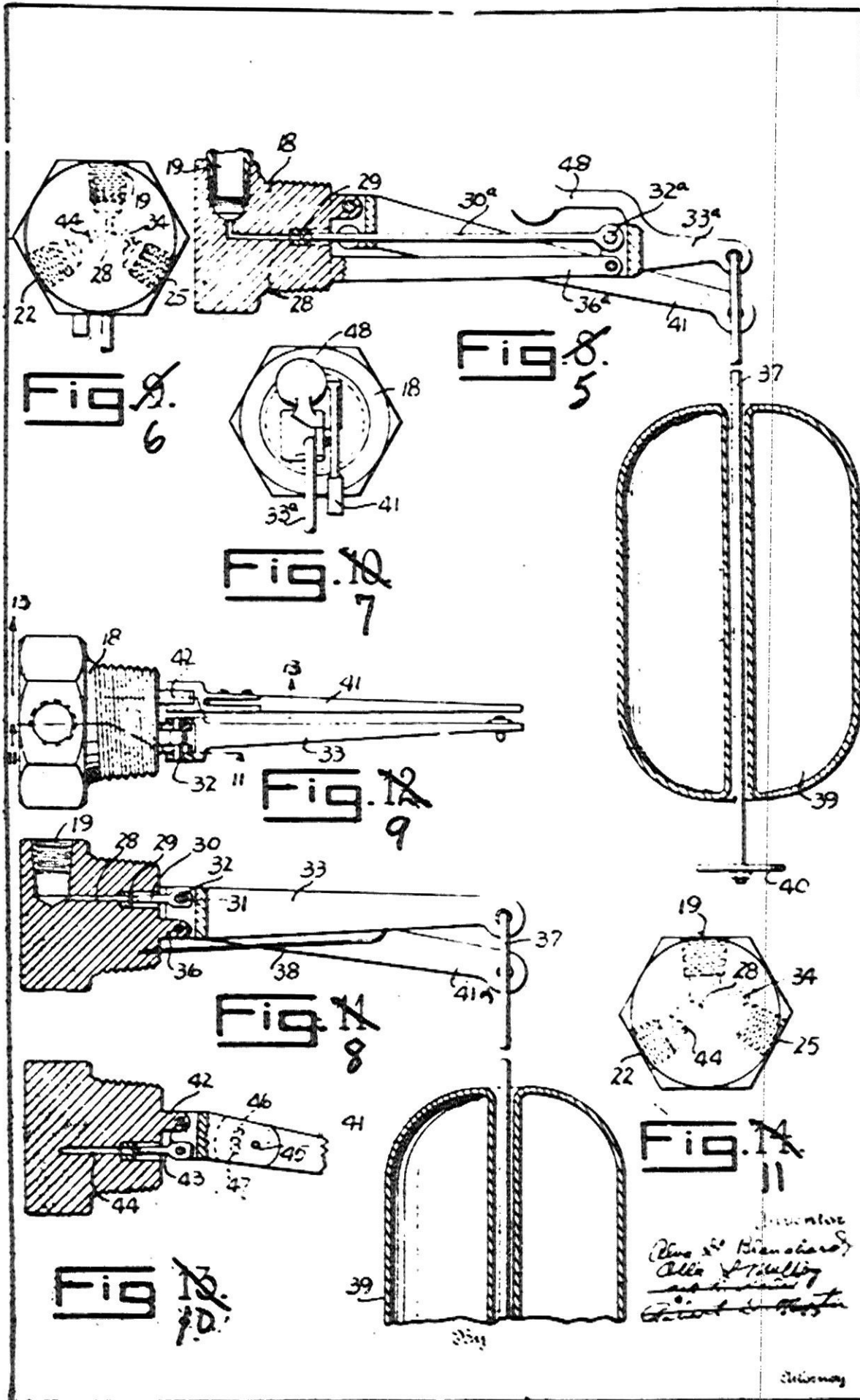
1. A boiler feed-regulator comprising a casing, a steam-outlet pipe connected to the casing, an inwardly-projecting valve-seat, a steam-valve having a valve-stem and seating against the valve-seat, a horizontal shaft, a horizontally-arranged float-rod provided with a float, a crank-arm on the shaft connected with the valve-stem, a crank-arm on the shaft connected with the float-rod, an indicator secured to the casing, a valve having a valve-stem and controlling the indicator, and a bell-crank lever having one arm connected with the valve-stem of the indicator-valve and the other arm adapted to be engaged by the projecting end of the stem of the steam-valve.

2. A boiler feed-regulator comprising a casing having a steam-chest provided at top with oppositely-disposed valve-seats, a steam-outlet pipe connected to the valve-chest, steam-valves having valve-stems and seating against the valve-seats, a horizontal shaft, a lever mounted on the shaft and carrying the valves, a horizontally-arranged float-rod provided with a float, a crank-arm on the shaft connected with the float-rod, an indicator secured to the casing, a valve having a valve-stem and controlling the indicator and a bell-crank lever having one arm connected with the valve-stem of the indicator-valve and the other arm adapted to be engaged by the projecting end of one of the stems of the steam-valves.

In testimony whereof we affix our signatures in presence of two witnesses.

OMAR E. CLARK.
ELLSWORTH E. CLARK.

Witnesses:
JESSE R. CROPSY,
ROSS A. EMINGER.



Mailed May 22, 1952

EXAMINER'S STATEMENT

This is an appeal from the final rejection of claims 1, 2 and 3.

Claims 23, 24, 27, 28 and 29 have been allowed.

A correct copy of the appealed claims appears on pages 1 and 2 of applicant's brief.

The reference relied upon is:

Blanchard 2,199,611 May 7, 1940

The applicant's device is adequately described, for purpose of this appeal, on pages 2, 3 and 4 of his brief.

Claims 1, 2 and 3 stand rejected on the ground of double patenting. These claims define nothing patentable over the claims in applicant's patent No. 2,199,611. It is conceded by applicant that broad claims 1, 2 and 3 herein are met by the structure recited in the specific claims of the patent. It is believed clear that the issuance of species claims in the patent in 1940 bars the issuance now of generic claims 1, 2 and 3. Applicant contends that the presentation of a generic claim in his original application 44,988 filed in 1935 gives him the right to have generic claims now. However the generic claim on which he relies (Claim 15 of application 44,988) was not to the same subject matter as the present claims 1, 2 and 3 since it was drawn to a combination including fluid motor actuated main valves

1 and was not drawn to the float operated valves per se as are the claims
2 at bar.

3
4 Regardless of the subject matter of claim 15 of original application 44,988
5 the important point to note is that such claim 15 was cancelled April 6,
6 1940 (page 8 of applicant's brief and patent file of patent No. 2,233,395)
7 prior to his filing on February 20, 1941 of application Serial No. 379,822
8 which contained claims 8, 9 and 10, which correspond to claims 1, 2 and
9 3 now at bar.

10 Thus at the time (February 20, 1941) when generic claims 8, 9 and 10 in
11 Serial No. 379,822 were first presented applicant did not have pending in
12 any application a generic claim of any kind, i. e. combination or element
13 claim, and the species claims relied upon in this double patenting rejection
14 had already issued on May 7, 1940. To state the situation in different
15 words, the species claims in the patent relied upon were permitted to
16 issue May 7, 1940 during the hiatus between the cancellation (in Serial
17 No. 44,988, Patent file 2,233,395) of the generic combination claim 15 on
18 April 6, 1940 and the presentation (in Serial No. 379,822 patent file
19 2,395,212) of generic element claims 8, 9 and 10 on February 20, 1941.
20

21 In view of the foregoing, it seems clear that applicant is not now entitled
22 to these generic claims. See Kaplan v. Robertson 9 U. S. P. Q. 563;
23 50 Fed. (2) 617 and Union Typewriter Co. v. Smith 173 Fed. 288 which
24 are believed to hold that generic claims to the same subject matter must
25 be filed before the species claims issue and that the generic claims must

1 be continuously prosecuted. See also Ex parte Gump 83 U. S. P. Q. 351
2 which appears to hold that an applicant is not entitled to generic claims
3 after the issuance of specific claims, whether or not he continuously as-
4 serted generic claims in his parent cases.

5
6 Acting Examiner.

7 Mailed Nov. 28, 1952

8
9 IN THE UNITED STATES PATENT OFFICE
10 BEFORE THE BOARD OF APPEALS

11 Ex parte Alva G. Blanchard

12 Application for Patent filed March 7, 1945, Serial No. 581, 373. Automa-
13 tic Control Mechanism for Pressure Vessels.

14 Hamer H. Jamieson for appellant.

15
16 This is an appeal from the final rejection of claims 1, 2 and 3.

17 Claim 1 is illustrative and reads as follows:

18
19 1. A float chamber, a plurality of fluid passages
20 through the wall thereof, valves in said passages, a
21 float arm pivoted adjacent to said passages, a float
22 thereon, and means on the pivoted end of said float
arm whereby said fluid passages may be opened in a
predetermined order by the fall of said float.

23 The reference relied upon is:

24 Blanchard 2,199,611 May 7, 1940

25 The application is concerned with the sequential control of a multiple

1 valve, the details of which are considered sufficiently set forth on pages
2 2 and 3 of appellant's brief.

3
4 The claims stand rejected on the ground of double patenting in view of
5 appellant's patent 2,199,611.

6 In reviewing the chronological background of the instant application, it is
7 noted that it stems from an application filed October 14, 1935. Division
8 was required in this application, and on May 28, 1938 the divisional appli-
9 cation resulting in the Blanchard patent 2,199,611, granted May 7, 1940,
10 was filed. The prosecution of the parent continued to appeal, terminating
11 adversely to appellant except as to one claim. Appellant on April 6, 1940
12 cancelled all claims except the single claim which had been allowed, ~~where~~
13 whereupon the application was in due course passed for issue. On De-
14 cember 5, 1940, delay of issue was requested in order to permit appellant
15 time to file a "partial division" application. Said application was filed
16 as a continuation-in-part on February 20, 1941. In this application divi-
17 sion was also required, and on March 7, 1945 the instant application was
18 filed as a result of said requirement.

19
20 There appears to be no controversy that the claims here on appeal cor-
21 respond to claims 8, 9 and 10 of the application filed February 20, 1941.
22 However, it is the Examiner's position that at the time these claims
23 "were first presented applicant did not have pending in any application
24 a generic claim of any kind, i. e. combination or element claim, and the
25 species claims relied upon in this double patenting rejection had already

1 issued on May 7, 1940." Appellant contends that he has attempted to
2 obtain broad generic claims to his "valve construction from the date of
3 first filing Serial No. 44,988 on October 14, 1935" some seventeen years
4 ago. In this connection, he calls attention to claim 15 of said application
5 and contends that this claim covers "the broad generic invention, although
6 covering it in combination with other elements of the system" and
7

8 "There is no rule of law known to appellant which
9 requires that he claim the generic subject matter
10 in the same form or type of claims in all of his
11 applications in order to avoid questions of double
12 patenting."

13 We do not believe that in the instant case it is a matter of form or type
14 but a matter of substance of the claims. We do not consider this claim
15 15, which admittedly contains elements of the system not present in the
16 claims here on appeal, is sufficient to avoid the rejection of double patent-
17 ing.

18 We are not unmindful that said claim 15 was rejected on the ground of old
19 combination and the rejection sustained on appeal. However, the fact re-
20 mains that this claim was not drawn to the same combination as the claims
21 here on appeal and that the latter claims were not presented until more
22 than nine months after the Blanchard patent 2,199,611 issued.

23 A careful consideration of the law cited by appellant and especially Kaplan
24 v. Robertson, 50 F. (2d) 617, which appears to be directly in point, leads
25 us to the conclusion that the Examiner's position is sound.

1 We have carefully considered all of the contentions and arguments in
2 appellant's brief, as well as those presented at the hearing, but we are
3 not convinced thereby that there was reversible error in the rejection of
4 the appealed claims.
5

6 The decision of the Primary Examiner is affirmed.
7

8 H. H. Jacobs
Examiner-in-Chief

9 B. H. Carpenter
10 Examiner-in-Chief
(Acting)

11 L. M. Andrus
12 Examiner-in-Chief
(Acting)

BOARD
OF
APPEALS

CHRONOLOGICAL BACKGROUND OF
BLANCHARD APPLICATION S.N. 581,373

J.A. 48

Exhibit 2

Safety Device
Filed
Oct. 14, 1935
Serial No.
44,988

Valve Structure
Filed
May 28, 1938
Serial No.
210,585

April 6, 1940
Claim 15
Cancelled with
reservations

Valve Operating
Structure
issued
May 7, 1940
Patent
2,199,611

Dec. 5, 1940
Request for
delay in issue
to complete
new application

Automatic Control
Mechanism
Claims 8-9-10 are
same as 1-2-3 in
this suit.
Filed
Feb. 20, 1941
Serial No.
379,822

Safety Fuel Cut Off
Valve
issued
Mar. 4, 1941
Patent
2,233,395

Automatic Control
Mechanism
issued
Feb. 19, 1946
Patent
2,395,212

Div. Application
3 claims 1-2-3
in question
Filed
Mar. 7, 1945
Serial No.
581,373

*Prepared by
Alva G. Blanchard
May 16, 1955*

INFERNO COMPANY		
115 RICOU STREET		SHREVEPORT, LOUISIANA
SCALE	DATE	USED ON
	5-16-55	
PART NAME		
Prepared as an exhibit in Blanchard vs. Patent		
Commission District Court Washington, D.C.		
CHECKED	REQUIRED	PART NO.
APPROVED		DWG. NO.

BRIEF FOR APPELLEE AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

APPEAL NO. 13,006

ALVA G. BLANCHARD, APPELLANT

v.

ROBERT C. WATSON, COMMISSIONER OF PATENTS,
APPELLEE

APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CLARENCE W. MOORE,
*Solicitor, United States Patent Office,
Attorney for Appellee.*

Index of Cases
Filed
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1933

Frederick M. Stewart
CLERK

APPEAL NO. 13,006

STATEMENT OF QUESTIONS PRESENTED

In the opinion of appellee, the two questions presented for determination on this appeal are:

(1) Did the three tribunals below, in applying the law against double patenting, commit error in finding that no claim the same in substance as the generic claims in suit was presented by appellant in any application prior to the issuance to him of a patent containing claims to a species included in the claimed genus.

(2) Did the District Court err in finding that the cited patents have elements which perform the functions of the elements in appellant's claims.

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AUTHORITIES CITED

Cases:

<i>American Steel & Wire Co. of New Jersey v. Coe</i> , 70 App. D. C. 138, 105 F.2d 17.....	3, 15, 16
<i>Ex parte Blair</i> , 1888 C. D. 16.....	11
<i>Butterworth v. U. S. ex rel. Hoe</i> , 112 U. S. 50, 61, 5 S. Ct. 25, 31, 28 L. Ed. 656.....	15
<i>Ex parte Carrier</i> , 1925 C. D. 222, affirmed <i>In re Carrier</i> , 55 App. D. C. 400, 4 F.2d 1013.....	7
<i>In re Eisler</i> , 40 CCPA 913, 203 F.2d 726.....	15
<i>Kaplan v. Robertson</i> , 50 F.2d 617, 621.....	7
<i>Ex parte Mullen and Mullen</i> , 1890 C. D. 9, 11.....	11
<i>Union Typewriter Co. v. L. C. Smith & Bros.</i> , 173 Fed. Rep. 288, affirmed 181 Fed. Rep. 966.....	7
<i>Vapor Car Heating Co., Inc. et al. v. Gold Car Heating & Lighting Co.</i> , 296 Fed. Rep. 188, 195 and 196, Id. 16 F.2d 194, Id. 268 U. S. 705, 45 S. Ct. 639, 69 L. Ed. 1167.....	7

Rules:

Rule 44 of the "Rules of Practice in the United States Patent Office"	11
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

APPEAL NO. 13,006

ALVA G. BLANCHARD, APPELLANT

v.

ROBERT C. WATSON, COMMISSIONER OF PATENTS,
APPELLEE

*APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR THE COMMISSIONER OF PATENTS

Introduction

This is an appeal from the judgment (J.A. 19) of the United States District Court for the District of Columbia dismissing the complaint (J.A. 2) in an action brought under Section 4915 R. S., 35 U.S.C. (1946) 63, in which appellant, as the applicant in an application for patent (Appellee's Appendix 21) entitled "Automatic Control Mechanism for Pressure Vessels," Serial No. 581,373, filed March 7, 1945, sought to have that court authorize the issuance to him of a

patent containing claims 1, 2, and 3 of said application. The refusal of these claims by the trial court was based on (1) double patenting and (2) unpatentability in view of cited prior art. In refusing the claims on the ground of double patenting, the court concurred with the tribunals of the Patent Office. The refusal of the claims for unpatentability in view of cited prior art was new with the trial court.

Section 4915 R.S., under which the action was brought, was repealed by the Act of July 19, 1952, C. 950, Section 5, 66 Stat. 815. With respect to relief by civil action to obtain a patent, here pertinent, it has been replaced by 66 Stat. 803, 35 U.S.C. (1952) 145. By the provisions of Section 4(a) of the recent Act, 66 Stat. 815, further proceedings on appellant's application, and like pending applications, are to be conducted in accordance with that Act.

COUNTER-STATEMENT OF THE CASE

To save expense for the appellant and expedite review by the trial court of the rejection on double patenting made by the Patent Office examiner (J.A. 42) and affirmed by the Patent Office Board of Appeals (J.A. 44), the parties entered into a "Stipulation" (J.A. 11) and an "Additional Stipulation" (J.A. 14). No testimony was offered at the trial below. Accordingly, facts which are not recited in those stipulations or which are not apparent from papers from the file of plaintiff's application in the record on appeal, are not properly brought to this Court's attention. For instance, there is no support for the allegations of the final paragraphs on pages 3 and 4 of Appellant's Brief.

SUMMARY OF ARGUMENT

1. The claims in suit are generic claims. Prior to the presentation in any application of appellant of claims the same in substance as those claims, appellant had been granted a patent containing claims to one of the species included in the genus now claimed. Under the law, no patent on an application with generic claims may issue subsequent to the grant of a patent with claims to one of the included species, unless the generic claims are introduced into the application prior to the issuance of the species patent. Claim 15 of appellant's application, Serial No. 44,988, is not the same in substance as any of the claims in suit. Moreover, that claim was cancelled prior to the grant of appellant's species patent. Claim 15 was not maintained in said application by a reservation clause. Patent Office Rule 44 forbade such a reservation as attempted by appellant. Section 121 of Title 35 has no application to the case at bar.

2. The three claims in suit additionally are unpatentable to appellant as met by the prior art cited in appellee's answer. Such citation was in order under the decision of this Court in *American Steel & Wire Co. of New Jersey v. Coe*, 70 App. D. C. 138, 105 F. 2d 17.

ARGUMENT

Double Patenting

1. Claims 1, 2, and 3 (J. A. 4) of appellant's application, which the tribunals of the Patent Office and the District Court refused to allow to appellant on the ground of double patenting, admittedly are generic claims (Appellant's Brief, page 12, first paragraph; See Stipulation, J. A. 12, third paragraph), which is

to say, claims expressing in broad terms what is common to a genus or set of specifically different devices. They were found to be unpatentable for double patenting in view of issued claims of appellant's own prior patent, No. 2,199,611, granted May 7, 1940 (J. A. 28). The claims of that patent of appellant's are species claims, defining one of the species, which is to say, one of the specifically different devices, covered by generic claims 1, 2, and 3 of appellant's application on appeal (J. A. 12, fourth paragraph).

Claim 1 of appellant's patent No. 2,199,611 (J. A. 30), as exemplary of claims 1 to 5 of that patent, and claim 1 in suit, as representative of claims 1, 2, and 3 of appellant's application, may be compared, as follows:

<i>Claim 1 of Patent</i>	<i>Claim 1 of Application</i>
A housing, a plurality of outlet passages through said housing, a valve in each of said passages, <i>said valves having slots of varying lengths in one end to determine the order in which they are opened. a pin through said slots operated by</i>	A float chamber, a plurality of fluid passages through the wall thereof, valves in said passages,

Claim 1 of Patent

a lever fulcrumed
within said
housing
a float on the
end of said
lever,

whereby said valves
are opened one at
a time in sequence,
responsive to the
downward movement
of said float.

Claim 1 of Application

a float arm
pivoted adjacent to
said passages,
a float thereon, and

MEANS ON THE
PIVOTED END
OF SAID FLOAT
ARM

whereby said fluid
passages may be
opened in a
predetermined order
by the fall of said
float.

From such comparison, it will be apparent that, except for the italicized language of claim 1 of appellant's patent and the capitalized terminology of claim 1 of appellant's application, the two claims are substantially identical. In its italicized language, which is specific and detailed, claim 1 of appellant's patent defines the particular construction illustrated in Figs. 1 to 4, all the figures, of the patent. This same particular construction is illustrated in Figs. 11, 12, 13, and 14 of appellant's application (Appellee's Appendix, 39). In its capitalized terminology, which is broad and sweeping, claim 1 of appellant's application covers, generically, not only such particular construction but other particular constructions illustrated in appellant's application but not illustrated in appellant's patent, as, for instance, the construction illustrated in Figs. 22,

23, 24, and 25 of appellant's application (Appellee's Appendix, 41).

Claims 1, 2, and 3, in essentially their present form (See Appellee's Appendix, 34), were included in appellant's application, Serial No. 581,373, as filed on March 7, 1945. However, appellant had on February 20, 1941, filed an application, Serial No. 379,822, which was copending with his application, Serial No. 581,373, from March 7, 1945, until it issued as a patent, No. 2,395,212, on February 19, 1946, in which were included claims 8, 9, and 10 that "are in substance, the same as claims 1, 2, and 3 in suit" (J.A. 12 and 13). Thus, appellant, in effect, presented claims 1, 2, and 3 for Patent Office consideration and sought a patent containing them as of February 20, 1941.

Appellant's patent, No. 2,199,611 (J.A. 28), had been granted, however, as of the earlier date of May 7, 1940, with, as already stated, species claims. Absent the presentation on or before May 7, 1940, of a claim or claims the same in substance as generic claims 1, 2, and 3 in suit in another application of appellant's, copending with appellant's application, Serial No. 210,585, filed May 28, 1938, upon which his patent No. 2,199,611 was issued, and copending with appellant's application, Serial No. 379,822, and continued prosecution until February 20, 1941, of claims the same in substance as claims 1, 2, and 3 in such other application, claims 1, 2, and 3 properly were denied to appellant on the ground of double patenting. The law, it is submitted, is well settled that no patent on an application with generic claims may issue subsequent to the grant of a patent which claims to one of the included species, unless the generic claims be introduced into the applica-

tion prior to the issuance of the species patent, and was so found by the District Court (J.A. 23). *Union Typewriter Co. v. L. C. Smith & Bros.*, 173 Fed. Rep. 288, affirmed, 181 Fed. Rep. 966. *Vapor Car Heating Co., Inc., et al. v. Gold Car Heating & Lighting Co.*, 296 Fed. Rep. 188, 195 and 196; Id. 16 F. 2d 194; Id. 268 U. S. 705, 45 S. Ct. 639, 69 L. Ed. 1167. *Ex parte Carrier*, 1925 C.D. 222, affirmed, *In re Carrier* 55 App. D.C. 400, 4 F. 2d 1013. *Kaplan v. Robertson*, 50 F. 2d 617, 621. In the second case, Judge Learned Hand said:

The relevant law is not complicated, and is, I think, wholly consistent and logical. It all proceeds upon the doctrine, thoroughly well settled, that, when an applicant receives his patent, the monopolies or "inventions" are embodied in his claims, and the disclosure in all its parts he transfers over into the public demesne. However, this dedication does not affect other applications which may then be pending at the time, because that cannot, of course, be his purpose, and because it would be unjust to impose upon him the equivalent of such a purpose. Akin to this doctrine, and running along with it in the books, is the doctrine that two patents—i.e., two claims—cannot exist side by side for the same invention, and that the earlier claim alone is valid. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186, 14 Sup. Ct. 310, 38 L. Ed. 121.

This being so, it follows that, when a patent once has issued, no subsequent claim can be valid for the same invention, and by invention we are not bound verbally by the claims, but we read them with the specifications, to see what they really mean. *Thomson-Houston El. Co. v. Hoosick Ry Co.*, 82 Fed. 461,

23, 24, and 25 of appellant's application (Appellee's Appendix, 41).

Claims 1, 2, and 3, in essentially their present form (See Appellee's Appendix, 34), were included in appellant's application, Serial No. 581,373, as filed on March 7, 1945. However, appellant had on February 20, 1941, filed an application, Serial No. 379,822, which was copending with his application, Serial No. 581,373, from March 7, 1945, until it issued as a patent, No. 2,395,212, on February 19, 1946, in which were included claims 8, 9, and 10 that "are in substance, the same as claims 1, 2, and 3 in suit" (J.A. 12 and 13). Thus, appellant, in effect, presented claims 1, 2, and 3 for Patent Office consideration and sought a patent containing them as of February 20, 1941.

Appellant's patent, No. 2,199,611 (J.A. 28), had been granted, however, as of the earlier date of May 7, 1940, with, as already stated, species claims. Absent the presentation on or before May 7, 1940, of a claim or claims the same in substance as generic claims 1, 2, and 3 in suit in another application of appellant's, copending with appellant's application, Serial No. 210,585, filed May 28, 1938, upon which his patent No. 2,199,611 was issued, and copending with appellant's application, Serial No. 379,822, and continued prosecution until February 20, 1941, of claims the same in substance as claims 1, 2, and 3 in such other application, claims 1, 2, and 3 properly were denied to appellant on the ground of double patenting. The law, it is submitted, is well settled that no patent on an application with generic claims may issue subsequent to the grant of a patent which claims to one of the included species, unless the generic claims be introduced into the applica-

tion prior to the issuance of the species patent, and was so found by the District Court (J.A. 23). *Union Typewriter Co. v. L. C. Smith & Bros.*, 173 Fed. Rep. 288, affirmed, 181 Fed. Rep. 966. *Vapor Car Heating Co., Inc., et al. v. Gold Car Heating & Lighting Co.*, 296 Fed. Rep. 188, 195 and 196; Id. 16 F. 2d 194; Id. 268 U. S. 705, 45 S. Ct. 639, 69 L. Ed. 1167. *Ex parte Carrier*, 1925 C.D. 222, affirmed, *In re Carrier* 55 App. D.C. 400, 4 F. 2d 1013. *Kaplan v. Robertson*, 50 F. 2d 617, 621. In the second case, Judge Learned Hand said:

The relevant law is not complicated, and is, I think, wholly consistent and logical. It all proceeds upon the doctrine, thoroughly well settled, that, when an applicant receives his patent, the monopolies or "inventions" are embodied in his claims, and the disclosure in all its parts he transfers over into the public demesne. However, this dedication does not affect other applications which may then be pending at the time, because that cannot, of course, be his purpose, and because it would be unjust to impose upon him the equivalent of such a purpose. Akin to this doctrine, and running along with it in the books, is the doctrine that two patents—i.e., two claims—cannot exist side by side for the same invention, and that the earlier claim alone is valid. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186, 14 Sup. Ct. 310, 38 L. Ed. 121.

This being so, it follows that, when a patent once has issued, no subsequent claim can be valid for the same invention, and by invention we are not bound verbally by the claims, but we read them with the specifications, to see what they really mean. *Thomson-Houston El. Co. v. Hoosick Ry Co.*, 82 Fed. 461,

27 C.C.A. 419 (C.C.A. 2d). If the claims be different, and the applications be copending, it makes no difference in which of the two applications the broader claims appear. *Suffolk Mfg. Co. v. Hayden*, 3 Wall. 315, 18 L. Ed. 76; *Century El. Co. v. Westinghouse, etc., Co.*, 191 Fed. 350, 352, 112 C.C.A. 8 (C.C.A. 8th); *Elec. Co. v. Brush El. Co.*, 52 Fed. 130, 138, 2 C.C.A. 682 (C.C.A. 2d); *Thomson-Houston El. Co. v. Elmira, etc., Co.*, 71 Fed. 396, 18 C.C.A. 145 (C.C.A. 2d); *Badische, etc., v. A. Klipstein & Co.*, 125 Fed. 543, 554 (C.C.S.D.N.Y.). Therefore the generic claims may issue last, unless they be for the first time introduced into the subsequent patent after the first have issued, when it has been held that they are void. *Union Typewriter Co. v. Smith* (C.C.), 173 Fed. 288. It is not clear when the generic claims were introduced into the later patent in *Morse Chain Co. v. Link Belt Machinery Co.*, 164 Fed. 331, 90 C.C.A. 650 (C.C.A. 7th). If before the specific patent issued, with deference I should doubt its authority in the Second Circuit.

Appellant insists (Appellant's Brief, page 14) that such an application as his application Serial No. 44,988 and such a claim as claim 15 of that application preclude operation of the doctrine of double patenting so enunciated. Appellant filed his application Serial No. 44,988 on October 14, 1935, and it was pending until the issuance of Patent No. 2,233,395 thereon on March 4, 1941. Claim 15 was an original claim of appellant's application Serial No. 44,988 (JA. 12), where it remained until April 6, 1940, when it became the subject

of an amendment to the application (J.A. 13) reading, as follows:

Cancel all claims except Claim 14 and Applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications.

Appellant's contention (Appellant's Brief, page 14) to the contrary notwithstanding, claim 15 is not in substance the same as claims 1, 2, and 3 in suit, or any of those claims. The examiner (J.A. 42), the Board of Appeals (J.A. 46) and the District Court (J.A. 21) concurred in so holding. Claim 15 recites a combination that includes, in addition to elements set forth in claims 1, 2, and 3 in suit, "a water supply conduit," "a fuel supply conduit," and "a fluid pressure actuated valve for each of said conduits." These conduits and valves are such as are illustrated in Figs. 4 and 5 (Appellee's Appendix, 38) of appellant's application in suit. The fuel supply conduit and the valve therefor also are such as are expressed in, for instance, allowed (See J.A. 42, second sentence) claim 23 of appellant's application in suit (Appellee's Appendix, 44). To ignore the quoted limitations of said claim 15 would require ignoring the similar limitations of said claim 23. Appellee, of course, would ignore none of the limitations. In appellee's view, neither claim 15 nor claim 23 is the same in substance as claims 1, 2, and 3 in suit.

The stated doctrine of double patenting would still operate to deny to appellant claims 1, 2, and 3 in his application in suit, even were claim 15 the same in substance as said application claims, and the District Court so found (J.A. 21 and 23). The quoted amendment of

April 6, 1940, in appellant's application, Serial No. 44,988, constituted a plain command to the examiner to cancel claim 15 from that application. "Thus," as the examiner stated (J.A. 43), "at the time (February 20, 1941) when generic claims 8, 9 and 10 in Serial No. 379,822 were first presented applicant did not have pending in any application a generic claim of any kind, i.e., combination or element claim, and the species claims relied upon in this double patenting rejection had already issued on May 7, 1940." Again in the words of the examiner, "the species claims in the patent relied upon were permitted to issue May 7, 1940 during the hiatus between the cancellation (in Serial No. 44,988, Patent file 2,233,395) of the generic combination claim 15 on April 6, 1940 and the presentation (in Serial No. 379,822 patent file 2,395,212) of generic element claims 8, 9 and 10 on February 20, 1941."

At the bottom of the doctrine that generic claims must be pressed prior to the issuance of a patent with species claims would seem to be the thought that to countenance delay would bring damage to the public. To confront the public with, first, patent species claims, and then, subsequently, with belatedly prosecuted patent generic claims, could cause the public to pay tribute twice and over an extended period for the same invention, as, first, narrowly expressed, and then, later, broadly expressed. The doctrine hence would appear to contemplate not only timely presentation of the generic claims, but, additionally, their continued prosecution, and this was the conclusion of the District Court (J. A. 23). Approval of discontinuous prosecution would furnish means for vitiating what is a salutary doctrine.

Appellant argued before the District Court (J. A. 16) that by alleging in his amendment of April 6,

1940, in his application, Serial No. 44,988, "Applicant reserves the right to amend the cancelled claims and make them the subject matter of divisional applications," he kept claim 15 alive until the filing on February 20, 1941, of his application, Serial No. 379,822. As that court found (J. A. 21 and 22), Rule 44 of the Rules of Practice in the United States Patent Office in force on April 6, 1940, precludes giving any such effect to the allegations quoted from the amendemnt. That rule recites that "A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application." Between April 6, 1940, and March 4, 1941, when patent No. 2,233,395 was granted to appellant upon his application Serial No. 44,988, the subject matter of appellant's claim 15 was disclosed in said application but was not claimed therein. The attempted reservation as to that subject matter was a nullity under quoted Rule 44.

Said Rule 44 seems to have appeared for the first time in the edition of the Rules of Practice of April, 1888. *Ex parte Mullen and Mullen*, 1890 C. D. 9, 11. The practice of not permitting reservation clauses, however, earlier was established by Commissioner's decision. *Ex parte Blair*, 1888 C. D. 16. In that case, the Commissioner stated:

I understand that it has uniformly been the practice of the Office to require the reservation clauses in applications to be stricken out in order to compel the applicant to file his second application and have it pending concurrently with the first, and when that has been done and the merits of the applications have been settled, to consider whether cross-references are necessary and whether the patents

should issue at the same time. The purpose of such a practice is obvious, and it is consonant with public policy, for it has in view the preventing of the undue extension of a monopoly by first taking out a patent upon a part of an invention and subsequently upon another part, and so on, so long as it is within the power of the applicant to do so.

In the case before me the application shows a process and an apparatus by which the process can be carried out, although applicant claims the process alone. Under *ex parte Herr* (41 O. G., 463) there is no doubt that process and apparatus should be covered by separate applications, and the applicant in this case has seen proper to pursue such course. He has filed a separate application for the process, but he has not yet filed an application for the apparatus, and he may never do so; but by introducing a reservation clause into the present application and carrying it into his patent, in case one were granted, he would thereby erect a warning by which the public would be deterred from entering upon this field of invention, and also would be prevented from knowing just what property it was purchasing in dealing with such patent. This would be the case to some extent if applicant should subsequently file the application as indicated; but the natural and necessary effect of such a course is to prolong to a greater or less extent the monopoly by securing a second patent at a later date.

Now if the applicant intends to patent both of these inventions—the process and the apparatus—he should either come into the office with both applications, and have them pending concurrently,

or, if he sees proper, he may file them separately; but he must take the consequences of electing the latter course by accepting his first patent without any reservation clause in it with reference to the second application. This is the policy of the requirement, and it is the only power the Office possesses by which it can control to this extent the action of applicants, protect the public against the extension of the monopoly, and secure its rights to the unclaimed inventions shown in patents.

If, as matter of fact and law, the process and the apparatus in the present case are distinct and separate inventions and applicant desires to patent them, the office is open to him at all times. If they are separate and distinct inventions to such an extent that a disclosure of the apparatus in the patent for the process does not constitute a dedication of the former to the public, the applicant is safe without any reservation clause. If, on the other hand, such a disclosure of the apparatus operates to dedicate the invention to the public, then the applicant has ample protection by filing his application for the apparatus concurrently with that for the process, and if he chooses to omit both of these courses, in my opinion he has no right to insist upon retaining the reservation clause in his present application. There is a distinction between a reservation clause in such a case as this and cross-references such as would be required should a second concurrent application be filed for the apparatus. In the latter case, the inventions being so nearly related to each other, applicant would be required to file cross-references, the effect of which would simply be the announcement that the inven-

tion claimed in the one application was not the same as that claimed in the other.

To permit in a pending application a reservation of a claim for a future application would enable the applicant to have a patent issued including subject-matter for which no examination had been made to determine whether he had any right to a patent for the thing which he so reserved.

In my opinion, there should be a rule forbidding the introduction of reservation clauses in applications; but I feel satisfied that, in the absence of the rule, the Commissioner has the power, and it is the proper practice, to discourage their employment and to require their cancellation.

Appellant now insists (Appellant's Brief, page 21) that Rule 44 is inapplicable to the attempted reservation in his amendment of April 6, 1940, to his application, Serial No. 44,988. His position apparently is that an amendment to an application for patent is not a part of the application, and Rule 44 refers only to reservations in pending applications. Of course, an amendment is a part of a pending application, even though not a part of the application as filed, and any reservation in an amendment is "in the pending application" within the language of the rule. But were Rule 44 inapplicable, appellant should not benefit from the attempted reservation. That reservation is subject to condemnation for the reasons recited in the foregoing quotation from *Ex parte Blair*.

Again, appellant (Appellant's Brief, page 13) relies, for the first time, on 35 U. S. C. (1952) 121. Such reliance is misplaced for the one sufficient reason, apart from others, that the statute restricts use of a reference

only where there has been precedent action under the statute and hence prior to January 1, 1953. *In re Eisler*, 40 C. C. P. A. 913, 203 F. 2d 726.

Refusal of a patent to appellant on the ground of double patenting was, it is submitted, correct.

Unpatentability in View of the Prior Art

2. The three patents which the District Court found (J. A. 22) meet each of claims 1, 2 and 3 in suit were cited for the first time in appellee's Answer to appellant's Complaint. Such citation, however, was in order under the decision of the present court in *American Steel & Wire Co. of New Jersey v. Coe*, 70 App. D. C. 138, 105 F. 2d 17, to which the trial court specifically referred (J. A. 15). Under that decision, as the trial court concluded (J. A. 23), "Patents not cited in the Patent Office may be received and considered at the trial of a civil action brought under the provisions of 35 U. S. C. (1952) 145." The foundation for the quoted law is independent of Rule 106 of the Rules of Practice of the United States Patent Office in Patent Cases, upon which appellant relies (Appellant's Brief, pages 23 and 24), or of the prior practice in the Patent Office therein summarized. In a civil action to obtain a patent, patents may be newly cited, because, in the words quoted by the present court from *Butterworth v. United States ex rel. Hoe*, 112 U. S. 50, 61, 5 S. Ct. 25, 31, 28 L. Ed. 656, such a proceeding "is not a technical appeal," confined to the case as made in the record of the Patent Office, but "is prepared and heard upon all competent evidence adduced and upon the whole merits."

The three patents will be applied to claims 1, 2, and 3 in suit (J. A. 4 and 5), and not to the so-called "composite claim" which appellant sets forth on pages 25

and 26 of his brief. Only those three claims, and not the "composite claim," properly are before this Court for consideration. *American Steel & Wire Co. of New Jersey v. Coe, supra*, and case cited. With respect to the McLauchlin patent (J. A. 34), appellant admits (Appellant's Brief, page 29) a disclosure therein of a float chamber, as specified in claim 1. He denies that this patent shows a plurality of fluid passages through the wall of that chamber, as further required by claim 1. However, pipe C constitutes such a passage additionally to admitted passage L. Such denial by appellant is the foundation for his objections to the readability of the remaining limitations of claim 1 upon the McLauchlin patent. With that denial failing, the objections also fail.

Claim 3 reads upon the McLauchlin patent in the same manner that claim 1 does. Appellant now insists (Appellant's Brief, page 29) that, as to one of the two valves specified, disclosure is lacking in the McLauchlin patent of the limitation, appearing solely in claim 2, calling for means on the pivoted end of the float lever whereby the valves in the plurality of steam conducting passages are "lifted from their seats." Appellant asserts that in McLauchlin's spring-actuated valve A, the valve is pushed from its seat, rather than lifted. In such a valve, however, the valve would be lifted by pushing. The claim does not require it to be lifted by pulling. The valve would be in the nature of a poppet valve located in a partition. Pushing the valve stem would lift the valve from its seat.

With respect to the Singleton patent (J. A. 31), appellant admits solely (Appellant's Brief, page 28) that it shows a float chamber. All the remaining limitations of claims 1, 2, and 3, he suggests, are undisclosed in that

patent. This suggestion is predicated upon appellant's view that Singleton lacks a disclosure of a plurality of outlets or passages. That view is, of course, mistaken and untenable. The passages controlled by Singleton's valves G', G, and G constitute the required plurality.

The Clark patent (J. A. 37), appellant now insists (Appellant's Brief, page 30), does not have a plurality of openings through the admittedly disclosed float chamber. The two passages respectively closed by valves 9 and 10, however, plainly constitute such a plurality of openings. In that these valves 9 and 10 move at the same time, the passages are opened in "a predetermined order." The predetermined order is simultaneity.

The refusal of a patent to appellant on the additional ground that the claims in suit are met by the prior art, it is submitted, also was correct.

CONCLUSION

For the reasons given, it is respectfully submitted that the findings of fact entered by the District Court have adequate support in the record, that the conclusions of law are correct, and that the judgment appealed from should be affirmed.

Respectfully submitted,

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Attorney for Appellee.

FEBRUARY, 1956.

APPELLEE'S APPENDIX

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APPELLEE'S APPENDIX

Specifications, Drawings, and original claims 1, 2, and 3 of Appellant's Application entitled "Automatic Control Mechanism for Pressure Vessels," Serial No. 581,373, filed March 7, 1945.

My invention relates to steam boilers and pertains particularly to mechanism employed in connection therewith to control the water in use.

This application is a division of Application Serial No. 379,822, filed February 20, 1941.

In the operation of steam boilers it is desirable to have connected therewith automatic mechanism for controlling the supply of water to the boiler or the fuel, or both, and also to provide for the blowoff fluid from the boiler when said fluid becomes contaminated.

It is an object of my invention to provide an automatically operating valve or series of valves through which steam from the boiler may be directed to a plurality of steam operated devices for effecting the control of the water and fuel, or to operate other devices employed in connection with said boiler.

I have as a further object to provide an efficient type of compound valve which may effectively operate to deliver steam from a plurality of ports leading from the steam boiler.

The invention also includes an effective means of operating the individual valves in the boiler from a common float, said float being mounted to control the valves in a most effective manner.

The invention resides in the combination of the parts and their construction making up my improvement and attention is called to the drawings herewith wherein the several parts are disclosed.

In Fig. 1 I have shown a perspective view of a boiler to which the invention may be applied.

Fig. 2 is a side view partly in section illustrating the connection of the float with the valve operating lever.

Fig. 3 is a longitudinal section on the plane 3-3 of Fig. 4.

Fig. 4 is a side view taken at right angles to Fig. 3 showing a valve for controlling the passage of fluid in response to steam pressure or hand operation.

Fig. 5 is a sectional view somewhat enlarged and illustrating means for operating the valve.

Fig. 6 is an end view of the plug in which the valve control passages are formed.

Fig. 7 is a broken end view of the device shown in Fig. 5.

Fig. 8 is a side view of a modified form of the construction shown in Fig. 5, the plug being shown in section.

Fig. 9 is a top plan view of the valve operating assembly shown in Fig. 8.

Fig. 10 is a broken section on the line 10-10 of Fig. 9.

Fig. 11 is an end view of the plug shown in Fig. 9.

Fig. 12 is a top plan view of a different embodiment of the valve operating mechanism.

Fig. 13 is a longitudinal section on the plane 13-13 of Fig. 12.

Fig. 14 is an end view of the valve plug employed in this embodiment of the invention.

Fig. 15 is a transverse section on the plane 15-15 of Fig. 13.

Fig. 16 is a top plan view of a still different embodiment of the valve operating mechanism.

Fig. 17 is a longitudinal section on the plane 17-17 of Fig. 16.

Fig. 18 is a transverse section on the plane 18-18 of Fig. 17.

Fig. 19 is a top plan view partly in section of a still different embodiment of the valve controlling mechanism.

Fig. 20 is a side elevation of the Fig. 19 embodiment.

Fig. 21 is an end view of the valve plug shown in Fig. 19.

Fig. 22 is a broken detail of the inner end of the valve operating lever shown in Fig. 20.

Fig. 23 is a broken detail showing a different valve controlling structure.

Fig. 24 is an end view of the valve plug which may be employed with the Fig. 23 embodiment.

Fig. 25 is a broken section through a portion of a steam boiler showing the attachment of the float chamber thereto.

Fig. 26 is a sectional view through the float chamber taken at right angles to Fig. 25.

My invention is adapted for application to any ordinary type of steam boiler. In Fig. 1 I have shown a boiler 1 having the usual fire box 2 and steam chest 3 thereon. Connected with this boiler I provide a float chamber 4. This chamber may be located within the boiler, if desired, in the manner suggested in Figs. 25 and 26. In the preferred embodiment, however, the float chamber is arranged outside the boiler and connected with the upper end of the boiler through a pipe 5. A lower pipe 6 connects with the boiler below the water line so that the chamber 4 will be filled with water to the same level as is the boiler.

With reference to Fig. 2, there is at one side of the valve chamber 4 a nipple 7 preferably welded within

an opening in said chamber to hold said nipple securely in position and to provide a reliable seal against the leakage of steam therethrough. At the outer end of the nipple 7 is a threaded seat to receive a valve plug 18, which is screwed tightly therein.

The plug 18 has therethrough a plurality of passages for the outlet of steam from the boiler, each of said passages being connected with a fluid conducting pipe. With reference to Figs. 8, 9, 10 and 11 it will be seen that said plug 18 may have three separate outlets therethrough for the steam. One of said outlets 19 may be connected with an upwardly directed pipe 20 leading to a whistle 21. Another of said outlets 22 may be connected with a pipe 23 leading to the blowoff valve 24. The third of the outlets 25 may be connected with a pipe 26 leading to the fuel cutoff valve 27. Passages are formed longitudinally of the plug leading to these outlets and, in Fig. 8, the passage 28 is connected with the outlet 19 and has at its inner end a valve seat 29 forming an entrance to said passage. The valve 30 is positioned to engage the valve seat, said valve being formed with an elongated opening 31 at the inner end of its stem to receive a pin 32 mounted within a lever arm 33. There is an outlet passage 34 connected with the outlet 25, as will be seen from Fig. 11. This passage is aligned horizontally in parallel relation with the passage 28 and has a valve with a stem 35 thereon of similar construction controlling it in the same manner as the valve 30. It has an opening to receive the pin 32, the opening, however, being a close fit with the pin so that no lateral play of the pin in the opening is possible.

It will be seen that the lever 33 is pivoted upon the arm 36 projecting inwardly from the plug at a point

below the valves. The lever projects inwardly into the fluid chamber and has an opening at its free end to receive a valve rod 37. The lever arm 33 is held normally in raised position to close the valve 30 by a spring arm 38.

Slidable upon the rod 37 is a float 39. Said float has a longitudinal passage therein to receive the rod 37 and is slidable freely on the rod. It is limited in its movement downwardly on the rod by a plate 40 secured to the lower end of said rod.

Adjacent the lever arm 33 is a second lever arm 41. Said arm is hinged at its end adjacent the plug to an arm 42 on the plug. At a point below the hinged connection said lever is connected to a valve 43 operating to open or close the passage 44 in the valve plug, said passage 44 leading to the outlet 22. The arm 41 may be formed with a joint therein, one portion of the arm being pivoted at 45 to the adjacent section of the arm. The pin 46 in the inner section of the arm will engage within an arcuate slot 47 in the adjacent section, thus allowing for angular adjustment of the outer end of the arm to fix the outer end of the arm at the proper height relative to the adjacent lever arm 33. The outer end of said lever arm 41 is closely adjacent the end of the lever arm 33 and will be engaged by the upper end of the float as it rises along the rod 37. This arm 41 is held by gravity in its lower position to close the valve 43.

It will be understood that in the operation of the boiler the supply of water to the boiler may be insufficient to maintain the proper level of the water in the boiler. As the level of the water in the boiler drops to a height which is sufficient the float 39 will contact

with the plate 40 and pull the lever arm 33 downwardly. The valve 35 controlling the passage 34 will open first due to the lack of play of the pin 32 within the end of the valve stem. This movement of the valve 34 will open the passage of steam to the whistle and sound an alarm. If no further supply of water is pumped into the boiler the decrease in the level of the water in the boiler will cause the lever arm 33 to engage the inner end of the slot 31 in the valve 30 and pull said valve 30 from its seat, opening up the passage of steam to the fuel cutoff 27 and stop the supply of fuel to the fire box, thus preventing accident to the boiler through failure of a sufficient supply of water therethrough.

If the supply of water to the boiler is in excess of that necessary to maintain the proper level of the water therein, the float 39 will slide upwardly along the float rod 37 and bring the float into contact with the arm 41. Said arm 41 will be moved upwardly opening the valve 43 and allowing steam to pass through the outlets 44 and 22 to the blowoff valve 24, thus allowing water to be blown from the boiler and acting to clean the material from the boiler. When sufficient water has been blown from the boiler to lower the level the float will drop, closing the valve.

In Figs. 5, 6 and 7 the construction of the valve operating device is nearly the same as that disclosed in the embodiment just described. The valve operating lever 33a is, however, pivoted to the forward end of the arm 36a, which is projected forward from the plug a material distance into the float chamber. The valve 30a is also extended forwardly for attachment to the pin 32a. The lever arm 33a is held in its upward position closing the valve by a weight arm 48, which

is mounted upon the pivoted end of the lever 33a and extends outwardly beyond the pivotal point in the lever and serves to hold the lever arm 33a in its raised position closing the valve 30a. It will be understood that this arrangement may be substituted for that disclosed particularly in Fig. 8, where a spring is necessary to hold the float rod 37 in raised position.

Other arrangements for operating the valve previously described may be made and in Figs. 12, 13 and 14 a different embodiment of the invention is disclosed. In this form of the invention the plug 49 is constructed in a manner similar to the plug 18 and has two upper outlets arranged in a horizontal plane. Said outlets are shown at 50 and 51 in Fig. 14. They are adapted to be controlled by valves 52 and 53, respectively, and it will be understood that the construction of the plug and of the valves and valve stem is similar to that previously disclosed. In these embodiments, however, the valve 52 will control the discharge of steam to the alarm or whistle while the valve 53 will control the steam discharged to the fuel cutoff. The stem of the valve 53 has an elongated opening 54 therein to engage with the valve operating pin 55. At the end of each valve stem is a short arm about which is engaged a spring 56, one end of which is fitted within a recess 57 in the lever arm and tending to hold the valve in closed position. The lower valve 58 is also formed with elongated opening 59 therein to receive the pin 60 upon the lever arm. A spring 61 bearing against the end of the valve stem tends to hold the valve in closed position, in passage 58a to the blowoff valve.

The lever arm 62 is pivoted upon a cross pin 63 projecting inwardly from the plug and between the

upper and lower valves. Thus when the lever arm 62 is moved upwardly the valve 58 will be unseated, but when the lever arm is moved downwardly the two upper valves will be unseated, one to the whistle first and the one to the fuel cutoff second.

At the outer end of the lever is attached a float arm 64 which has a rigid connection at its lower end with the valve, as is shown particularly in Fig. 26. Thus when the float moves upwardly it will raise the arm 62, but when it goes downwardly it will move the arm 62 downwardly also. In this manner the valves 52, 53 and 58 are operated in the same sequence and to perform the same functions as in the previous embodiments.

In Figs. 16, 17 and 18 the connection of the lever arm with the valves is still further modified. In this form the plug 49 has the same passages for fluid therein as in the previous embodiment and the valves are arranged in the same relative positions. The two upper valves 65 and 66 have their inner ends extended somewhat further and have formed thereon radially extending flanges 67, 68 and 69, the flange 69 forming a head at the inner end of the valve stem. The flange 68 is movable on the valve and bears against the side walls of an upwardly forked arm 70 on the float arm 71. Thus the pressure of the spring 72 between the flange 67 and the flange or washer 68 tends to move the valve 71 inwardly and to be compressed by the upward movement of said lever arm.

On the lower side of the arm 71 is another forked arm 73 which receives the end of a valve stem 74 and serves to operate the valve 75 in the same manner as are the upper valves 65 and 66. The lever arm 71 is

pivoted upon a pin 63 in the same manner as in the previous embodiment and the operation of the valves by a float attached to the outer end 76 of said arm is the same as in the embodiment disclosed in Figs. 12 and 13.

It will be understood that the downward movement of the arm 71 will compress the spring 72 on the valve 75 and move the valve to closed position while the upper valves will be open. Due to the longer distance between the flange 69 upon the valve which controls the fuel line, this valve will be opened slightly later than the opening of the valve leading to the whistle. Thus the valves will operate in the same sequence as in the other embodiments.

In Figs. 19 and 20 a different type of valve for controlling the outlets through the valve plug is shown and also the number of outlets may be increased to four. In the embodiments shown in Figs. 19, 20 and 21 four separate outlets 78, 79, 80 and 81 are shown. These are parallel and in vertical alignment, as shown particularly in Fig. 20. Each of these extend from the outlets in the plug inwardly to issue from the flattened face 82 on the inner end of the plug. To provide the face 82 there is an inner extension 83 formed on the plug, one side of which is flattened and recessed to receive a face plate 84. Each of the passages extend through the body of the plug and into the extension 83 and are then directed laterally through the face plate 84, the outer surface of which forms a valve seat. As will be seen from Fig. 20, the openings from the separate passages issue from the face plate in a circular alignment about a pin or shaft 85 extending through the extension 83.

With reference to the shaft 85, said shaft is fixed against rotation in the plug extension by a pin 86. The projecting end of the pin is flattened on both sides, as shown at 87 and upon the flattened portion of the pin is mounted a washer 88, which is thus fixed against rotation on the pin.

Between the washer 88 and the face plate 82 is the head 89 of the lever 90. Said lever is formed of a plate of metal and the head 89 engages rotatably about the rounded portion of the pin or shaft 85 and is rotatable thereon. Arcuate openings 91, 92 and 93 are formed in the head of the lever to co-operate with the openings 78 to 81, inclusive. The washer 88 is held resiliently into contact with the lever 90 and in order to cause said lever to move abruptly from one position to another a series of notches shown at 94 in Fig. 22 are formed on the surface of the head 89 of the lever which co-operates with the inner surface of the washer. In said washer is a recess having therein a ball 95 positioned to engage within one of the said notches 94. The spring 96 on the shaft holds the washer 88 resiliently toward the lever arm 80.

Thus when in operation the lever arm is normally in the horizontal position as shown in Fig. 20, and is held in that position by the float. When the float drops, however, due to the lowering of the level of the liquid in the chamber the opening 92 is brought over the opening 78 which allows the steam to pass through said openings and the passage 78 and outwardly through a pipe 95 to the feedwater control valve 96, shown in Fig. 1. In the event of a failure of the water supply a further downward movement of the lever will bring the opening 91 over the outlet passage 81 furnishing

steam to the whistle. Still further downward movement will bring the opening 93 into registration with the outlet 80 and fluid will pass through said outlet 80 to the fuel cutoff valve 27 previously noted, and thus close off the fuel. When the lever 90 is moved upwardly by the raising of the level of the liquid in the float chamber the opening 92 will be brought into registration with the passage 79 leading to the blowoff valve 24, as previously described.

It will thus be seen that with this mechanism the passage of steam from the boiler through four separate passages may be regulated so that said passages will be opened for the flow of steam therethrough at the proper time, depending upon the level of the liquid in the boiler.

If only three outlets are provided from the boiler, as shown in Fig. 24, it will be obvious that said outlets may be arranged to communicate with openings on the inner face of the extension 83 arranged in a manner shown in Fig. 23. In this case the opening 78, the opening 80, and the opening 81 are arranged in the same relative positions as in the Fig. 20 embodiment and these openings will be normally closed. They will, however, be opened for the passage of steam there-through when the arcuate slots 92 and 93 are brought into registration therewith in an obvious manner.

The structure of the blowoff valve 24, which is operated by steam from the boiler when the opening leading thereto is automatically opened, is shown in Figs. 3 and 4. This valve is operated also by hand so that in case manual control is desired it may be exercised. With reference to the drawing, it will be seen that the passage 109 leading from the boiler would be normally

closed by a valve 110, the valve being adapted to operate within a valve chamber 111 extending laterally from the passage. The valve 110 may be of any desirable construction. I have shown a valve made up of two plates which are recessed toward the lower end to provide a chamber for a spring 112, which holds the two plates against their seats in a passage 109. There is a transverse passage 113 which may be moved into registration with the passage 109 when the valve is opened. Said valve plates are recessed at 114 adjacent their upper ends to receive a head 115 upon a valve rod 116.

The valve rod is secured at its outer end to a piston 117 movable within a cylinder 118. Said piston is held outwardly to hold the valve in position with the passage 109 closed. This is done by means of springs 119, one end of which bears against the piston and the other against the shoulder 120 in the valve bonnet 121. Each spring is mounted around a post 122 serving to hold said springs in position during operation.

Steam is conducted to the cylinder head above the piston into the chamber 123, through a passage 124, which is connected to the steam pipe 23 previously referred to. Thus when steam is allowed to flow through the pipe 23 to the said blowoff valve, pressure exerted by said steam on the piston 117 will depress the valve to open the same and allow the passage of liquid from the boiler. There is a bleed opening 141, Figs. 1 and 3, of slightly smaller area than 79, Fig. 20, by which the fluid from the cylinder 123 may escape when the pressure from the boiler is cut off and thereby close the valve port 79 when sufficient water has been expelled from the boiler. In a similar manner the fuel cutoff valve 27 and

the feedwater valve 96 are provided with bleed openings 142 and 143 respectively, it being understood that such openings are slightly smaller than the openings 80 and 78, Figs. 19 to 24, so that pressure may escape and allow these valves to return to normal position when pressure from the boiler is shut off.

This valve may be also operated manually through a valve stem 125, the inner end 126 of which bears rotatably against the outer end of the piston. A nut 127 screwed upon the threaded end 128 of the valve stem serves to move said stem in a well known manner.

It may become desirable to operate the blowoff valve 24 at intervals so that the impurities in the water in the boiler may be flushed out. This may be accomplished by opening a valve 129 shown in Fig. 1 between the two branches of the by-pass which includes the feedwater control valve 96. If this valve 129 is opened slightly water will feed therethrough to the boiler at a somewhat more rapid rate with the result that the liquid level will rise sufficiently to cause the float valve to open the steam passage leading through the pipe 23 to the blowoff valve and thereby blow the boiler down at frequent intervals, depending on the volume of excess water put into the boiler through valve 129.

Also, it will be noted that steam may be fed directly to the blowoff valve through a pipe 130, which is connected to a hand-operated valve 131 leading to the boiler. By opening the valve 131 fluid may pass directly through the pipe 130 to operate the blowoff valve in an obvious manner. When the valve 131 is closed a tap 132 adjacent thereto may be opened to bleed fluid from the line 130.

The construction of the float chamber shown in Figs. 25 and 26 has been already referred to. Instead of posi-

tioning the float chamber 137 outside the boiler it may be placed inside, and in such case the float 138 therein will be connected by a rod 139 to the outer end of the lever arm 140. In the construction shown in Fig. 26, the type of control valve disclosed in Fig. 20 is shown. Said lever thus controls the passage of fluid outwardly through the plug 77 to the various pipes leading therefrom, said pipes being removed for purposes of clearness.

It will be seen that I have provided a plurality of control devices for regulating the passage of steam from the boiler to any of a number of operated devices exterior to the boiler. Each of these devices functions in an economical manner through the operation of a float connected with the steam boiler. This construction is a simple and economical one and easily attached to any boiler in ordinary use.

It is also understood that the openings in the plugs in Figs. 5, 8, 12, 16 and 19 for various purposes in connection with the water level may be increased to accomplish additional purposes. For instance, in a five opening plug they would be used as follows:

1. To control feedwater pump.
2. To alarm for low water.
3. To operate fuel cutoff valve in event of further low water.
4. To operate a high water alarm.
5. To operate a blowoff valve.

The invention claimed is:

1. A float chamber, a plurality of fluid passages through the wall thereof, valves in said passages, a float arm pivoted adjacent to said passages, a float

thereon, and means on the pivoted end of said float arm whereby said fluid passages may be opened or closed in any predetermined order by the rise and fall of said float.

2. A float chamber, a plurality of steam conducting passages leading from said float chamber, a float lever, a pivotal support adjacent to said plurality of steam conducting passages, a float on said float lever, means on pivotal end of said float lever whereby valves in said plurality of steam conducting passages are lifted from their seats in any predetermined sequence desired by the rise and fall of said float.

3. A float chamber, a plurality of outlets from said float chamber, a float lever pivoted adjacent to said plurality of outlets, a float on said lever, means on pivoted end of said lever controlling said plurality of outlets, whereby said outlets may be opened or closed in any predetermined order by the rise and fall of said float.

* * * * *

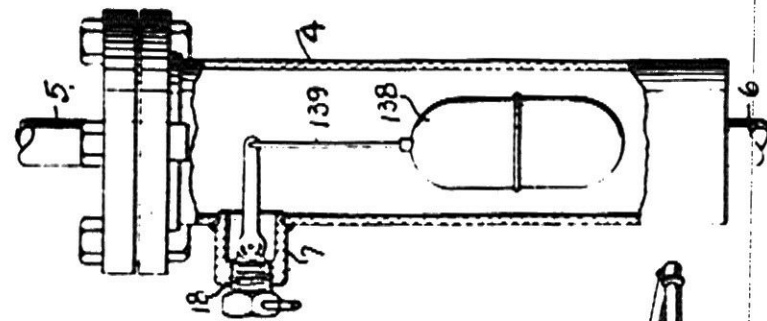


Fig. 2.

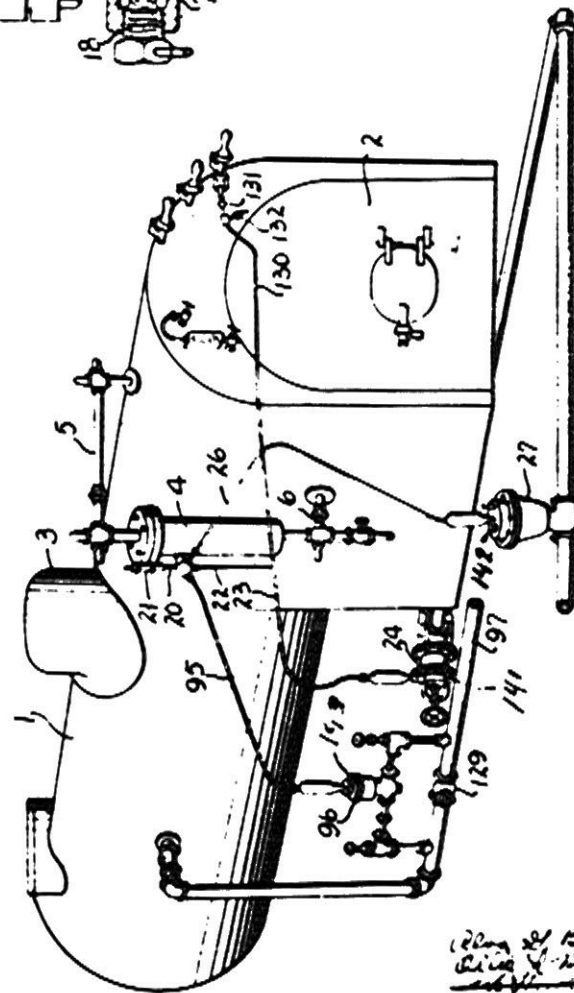


Fig. 1.

Inventor
 (By J. H. Simpson)
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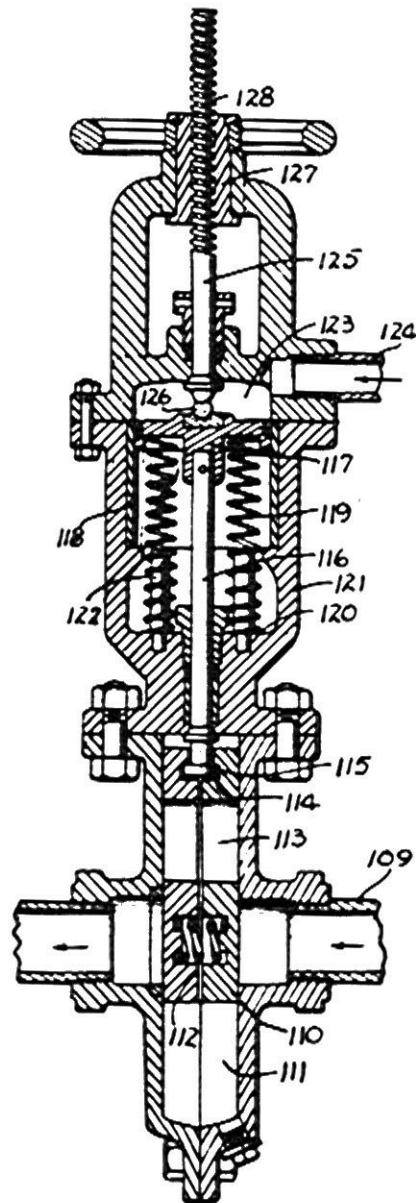


Fig. 4.

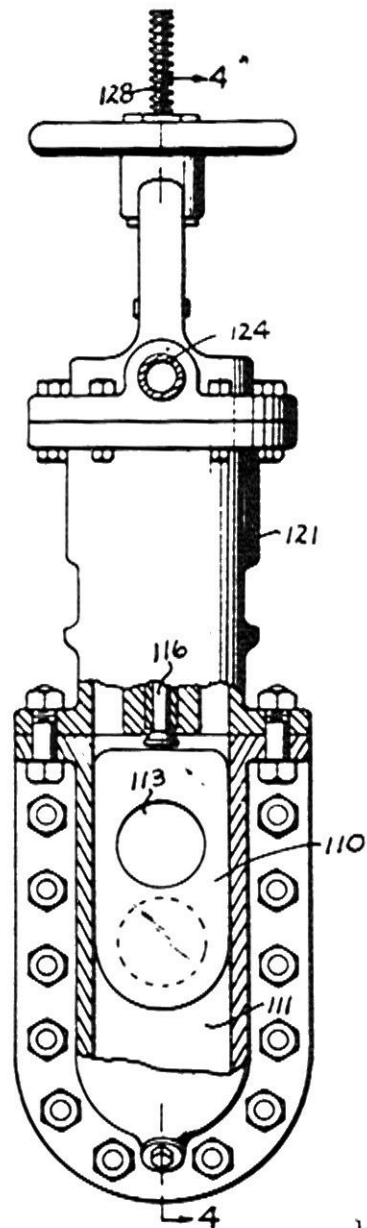


Fig. 5.

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Attorney

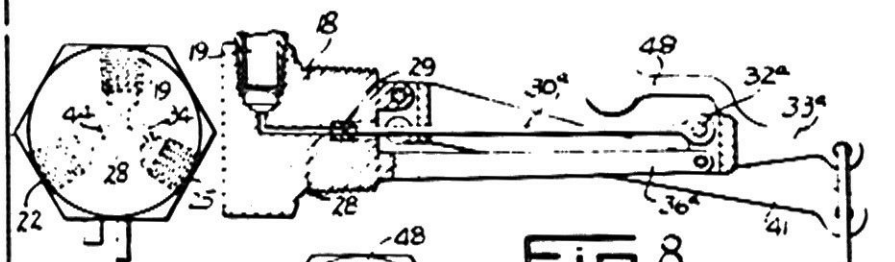


Fig. 8.

Fig. 9.

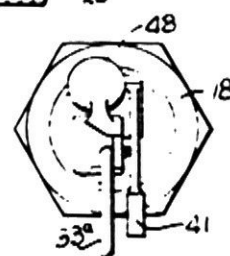


Fig. 10.

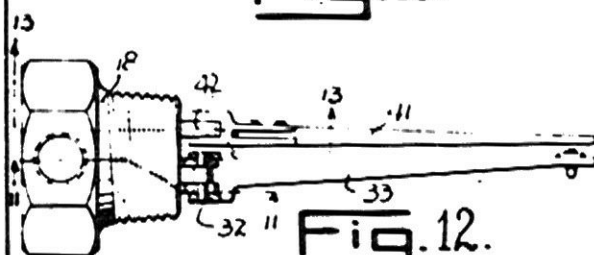


Fig. 12.

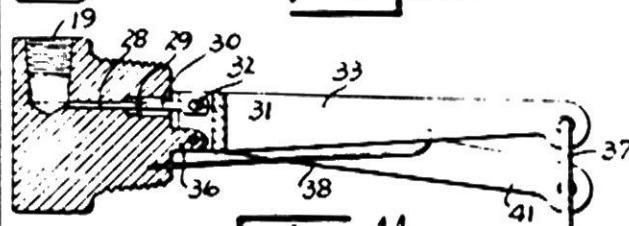


Fig. 11.

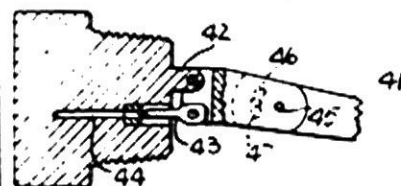


Fig. 13.

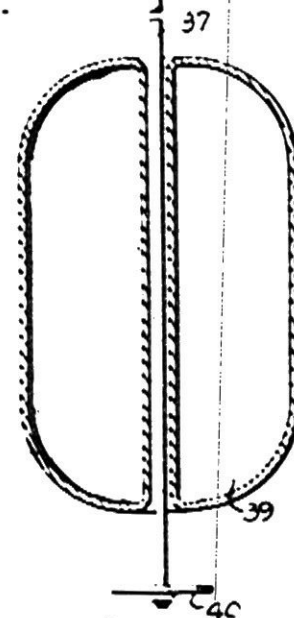
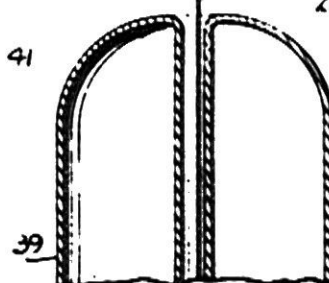
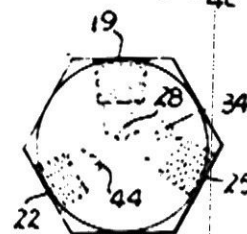
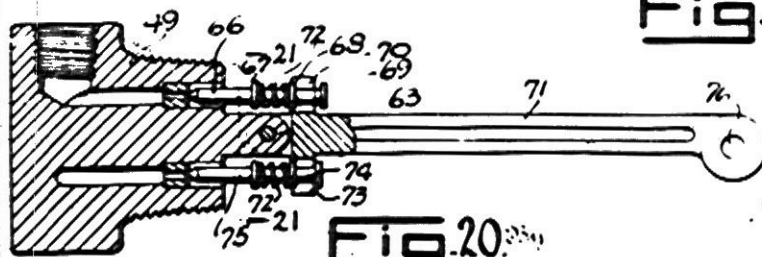
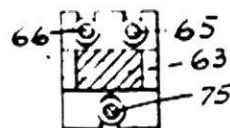
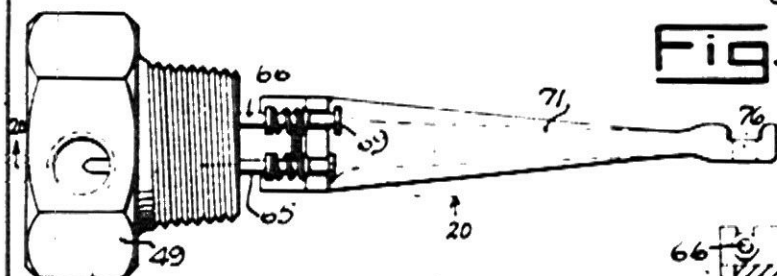
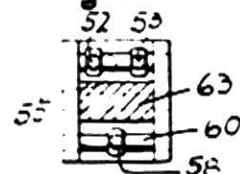
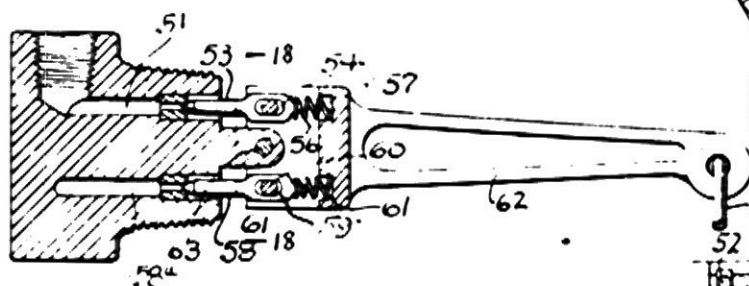
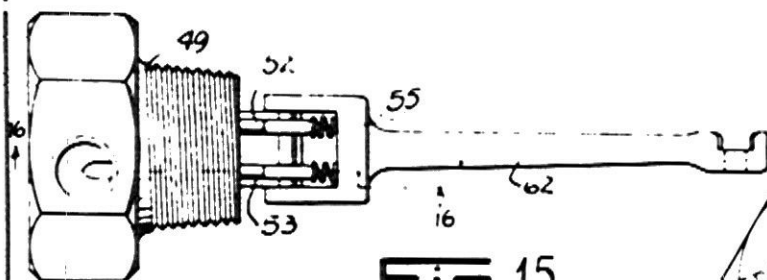


Fig. 14.



Patented Nov. 10, 1903.
 By *John W. H. H. H.*
 Attorney at Law



Department of
Internal Affairs
Bureau of
Criminal Investigation

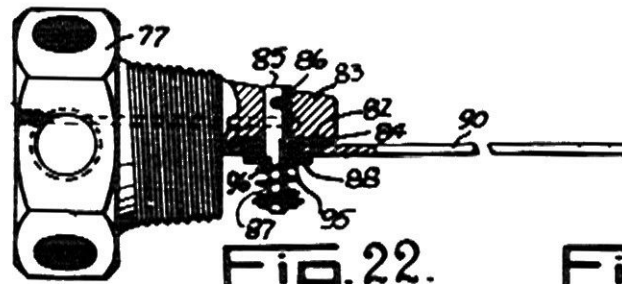


Fig. 22.

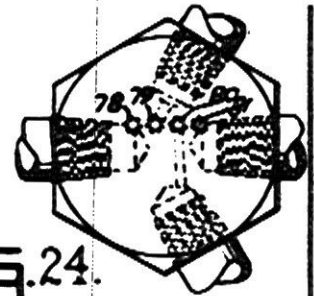


Fig. 24.

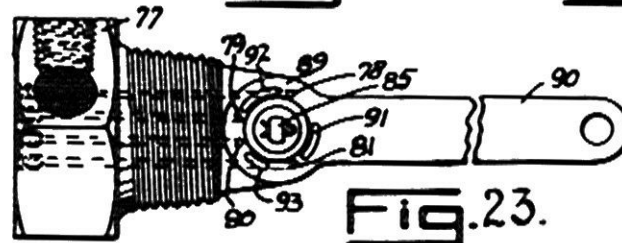


Fig. 23.

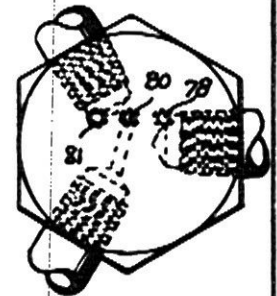


Fig. 27.

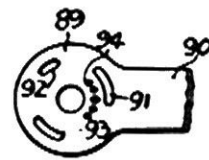


Fig. 25.

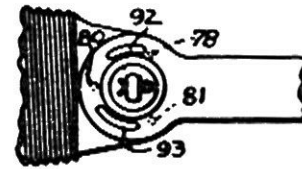


Fig. 26.

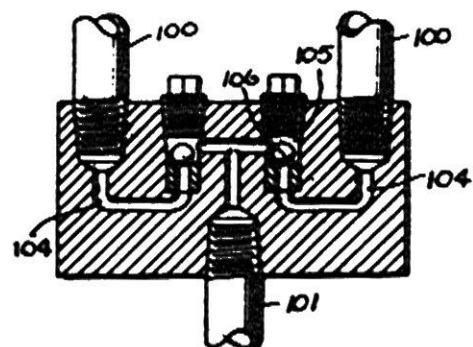


Fig. 28.

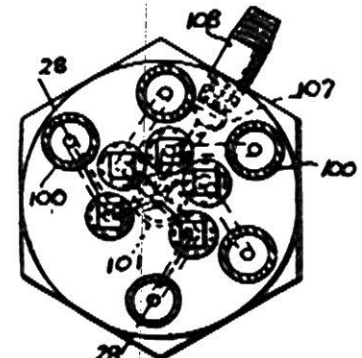


Fig. 29.

Inventive
 Oliver S. Blanchard
 By *[Signature]*
 Robert S. Martin

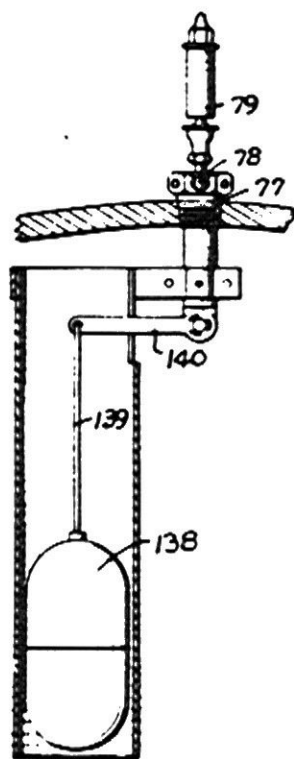


Fig. 31.

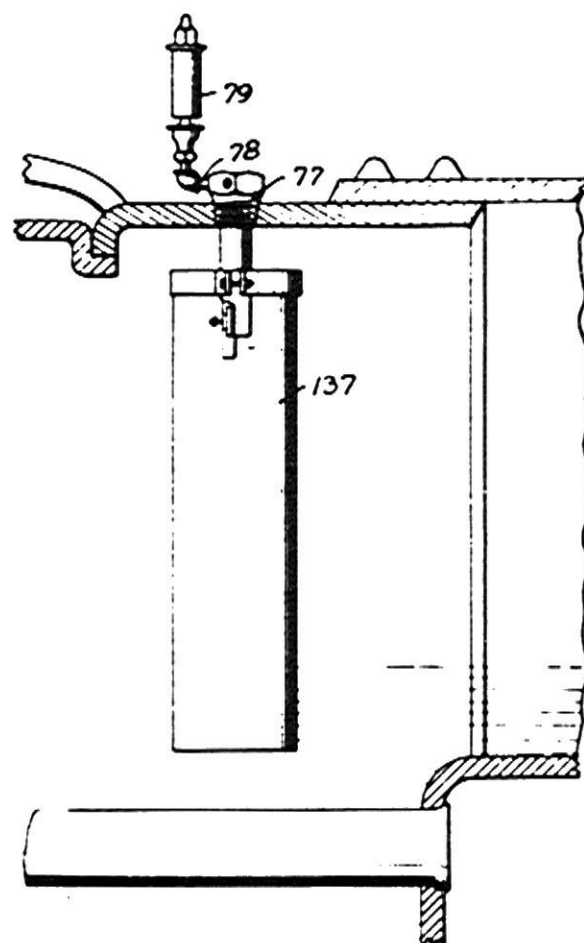


Fig. 30.

Inventor
 Alvin J. Blanchard
 Atty & Muller
 1111 N. 1st St.
 St. Paul, Minn.

Forwarding letter, dated March 1, 1945, accompanying original papers in Appellant's Application Serial No. 581,373.

Shreveport, La., March 1, 1945

Commissioner of Patents,
Washington, D. C.

Dear Sir:

SUBJECT: AUTOMATIC CONTROL MECHANISM FOR
PRESSURE VESSELS

We herewith enclose Patent Application on above subject, and also herewith enclose filing fee of \$30.00 to cover.

Inasmuch as this new application is concerned with the valve for distributing steam pressure to the respective safety valves and also to the blowoff valve, we do not find it necessary to use all of the figures of the original drawings. Instead the specification refers only to original Figs. 1, 2, 4, 5, 8 to 27 inclusive, 30 and 31. You will note from the returned negative photoprints that we have indicated with a white pencil the renumbering of these figures.

We herewith request that the patent office prepare the necessary drawings from these prints.

We understand the usual charge for these drawings is \$8.00 a page, and we are herewith enclosing our check to cover this amount, in addition to the filing fee of \$30.00.

Respectfully

ALVA G. BLANCHARD,
Applicant.

AGB:ej

Encl.—Petition, Specification, Oath, and Assignment.
 Check—\$30.00, filing fee. 6 Photoprints. Check—
 \$48.00 for new drawings.

P.S. . . I am herewith attaching a check for \$3.90;
 \$3.00 of which is for the filing of the assignment, and
 \$.90 is to cover cost of mounting photostatic copies on
 bristol board for examination prior to the making of
 the drawing by the Patent Office.

Encl.—check \$3.90.

**Excerpts from Amendment filed September 27, 1948,
 in Appellant's Application Serial No. 581,373.**

.

Cancel lines 4 and 5 in the specification and insert the
 following:

This application is a division of Application Serial
 No. 379,822 (Automatic Control Mechanism for Pres-
 sure Vessels) filed February 20, 1941, on which Patent
 No. 2,395,212 was issued February 19, 1946, which was
 a continuation in part of my Application Serial No.
 44,988 (Safety Apparatus for Boilers) filed October
 14, 1935 on which division was required, and on which
 Patent No. 2,233,395 issued dated March 4, 1941. Under
 the division requirements on my Application Serial No.
 44,988 filed October 14, 1935 I made the following Ap-
 plications Serial No. 210,585 (Valve Operating Struc-
 ture) Patent No. 2,199,611 dated May 7, 1940 and Serial
 No. 322,625 (Pivot Structure) Patent No. 2,362,429
 dated November 7, 1944.

.

Add the following new claims:

* * * * *

23. In a safety apparatus for boilers, the combination of a fuel supply conduit, a valve in said conduit, means for yieldingly holding said valve open, a compartment, a pressure responsive means to respond to pressure in said compartment arranged to close the valve, a housing, a plurality of outlet passages through said housing, a needle valve in each of said passages, means to open said valves in sequence, a conduit connecting the last of said sequentially opening valves to open with said compartment to supply fluid under pressure from said housing to said compartment to force said fluid against the pressure responsive means, and a conduit connecting another of said sequentially opening valves to an audible alarm actuating mechanism.

Excerpt from Amendment filed January 29, 1951, in Appellant's Application Serial No. 581,373.

Claim 23,

Line 7, after "passages" cancel "automatic means" and substitute therefor—single means responsive to conditions within said boiler—.

Appeal No. 13006

APPELLANT'S REPLY BRIEF

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED APR 9 1956

ALVA G. BLANCHARD

Appellant

Joseph W. Stewart
CLERK

vs.

ROBERT C. WATSON, Commissioner of Patents,

Appellee

Appeal from the Judgment of the United States
District Court for the District of Columbia

ALVA G. BLANCHARD,
Appearing in Proper Person,
Residing at 3618 Fairfield Avenue,
Shreveport, Louisiana

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SIDNEY YOUNG, COURT REPORTER, 418 FEDERAL BLDG., SHREVEPORT, LA.

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1 UNITED STATES COURT OF APPEAL
2 FOR THE DISTRICT OF COLUMBIA CIRCUIT
3

4 APPEAL NO. 13006
5

6 ALVA G. BLANCHARD,
7

Appellant,

8 V.
9

10 ROBERT C. WATSON, COMMISSIONER OF PATENTS,
11 Appellee.
12

13 AN APPEAL FROM THE JUDGMENT OF THE
14 UNITED STATES DISTRICT COURT FOR THE
15 DISTRICT OF COLUMBIA
16

17 APPELLANT'S REPLY BRIEF
18

19 Appellee's answering brief continues to cloud the issue by wasting
20 argument in his first six pages proving that the generic claims in suit
21 read on Appellant's species claim patent.

22 Appellant has admitted that the generic claims in suit read on his
23 species claim patent but maintains that the generic claims in suit have
24 their origin in generic claim 15 of the original application of which the
25 species claim patent was a division, which prevents the use of this
patent as a reference. (35 U.S.C. 121)

The real questions involved are aptly stated in Appellee's Brief,

page 1 and in substance are -

1. Was there error in finding that no claim the same in substance as the generic claims in suit, was presented in any application of Appellant prior to the issuance to him of a patent containing species claims included in claimed genus?

2. Was there error in finding that the cited patents have elements which perform the functions of the elements in Appellant's claims?

To answer yes to the first question it is only necessary to show that the substance of generic claims in suit originated in generic claim 15 in the original application and have been continuously prosecuted from the original application.

Appellee has admitted that generic claim 15 was in the original application (Stipulations lines 15 to 22 J.A. 12)

Appellee further admits that all elements of generic claims in suit are present in this original application in generic claim 15 (lines 12 to 16 Appellee's Brief, page 9) as well as three additional elements.

Had all claims been rejected in the original application, claim 15 would have been amended in the original application to leave out the additional elements mentioned above as suggested by the Examiner, so that the generic claims would be the same as those in suit. However all claims were not rejected and one claim, No. 14 was allowed. Since

1 this one claim was allowed and the other claims including 15 could not
2 be amended and retained in the original application because of the
3 division requirement, Appellant's only remaining course was to with-
4 draw these claims for amending and refile them in a new application as
5 suggested by the Examiner.

6 This is the reason why the Examiner accepted the reservation in
7 the record of the original application reading as follows - (J.A. 13)

8 "Cancel all claims except Claim 14
9 and Applicant reserves the right to
10 amend the cancelled claims and make
11 them the subject matter of divisional
12 applications.

13 Appellee still insists that it is proper to accept the cancellation
14 and deny Appellant the reservation under Rule 44, (Appellant's Brief,
15 page 20) maintaining that the rule nullifies reservations in amending
16 letters as well as reservations in the application itself.

17 This reasoning is clearly erroneous. Rule 44 was plain and was
18 directed solely to the Patent Office. The rule was a definite command
19 to the Patent Office to not permit such reservations as it refers to. The
20 rule says such reservations as it contemplates "will not be permitted"
21 ... etc.

22 The presumption therefore must be that when a reservation was
23 made in an amendment and was permitted by the Patent Office - that
24 it was not of the kind that "will not be permitted."

25 Moreover, if the reservation was not accepted when it was made,
the cancellation would not be effective either, as the reservation was in

1 combination with the cancellation and claim 15 would remain in the case
2 until the patent issued on the original application.

3 Appellee has no answer to the fact that Rule 44 no longer exists
4 and no answer to the definition of an application (Appellant's Brief, page
5 21 and 22).

6 In further support for the argument that Rule 44 nullified the re-
7 servation Appellee cites a case, Ex parte Blair (1888) C. D. 16
8 (Appellee's Brief, last paragraph, page 11, 12, 13 and 14) decided prior to
9 the establishment of Rule 44.

10 This case shows that Rule 44 was adopted to perpetuate the Patent
11 Office practice of requiring reservations to be stricken from the appli-
12 cation in order to compel the applicant to file his second application
13 and have it pending concurrently with the first. This shows that Rule 44
14 was as originally adopted, mandatory on the Patent Office to prohibit
15 certain types of reservations in applications and the presumption must
16 be recognized that if a certain reservation was made to withdraw certain
17 claims for amending and refiling in a separate application to be filed be-
18 fore the issuance of the patent on the first application in order to estab-
19 lish co-pendency, and no requirement was made by the Patent Office to
20 strike out this amendment, then the rule would definitely not apply to
21 the reservation made.

22 The plain simple wording of the Rule shows clearly that if it was
23 applicable when the reservation was made it was mandatory on the
24 Patent Office to require it to be stricken and since it was not required
25 to be stricken it is clear that when the reservation was made that the

1 Rule 44 was not deemed to be applicable.

2 If, however, the Patent Office clearly erred in not requiring this
3 reservation to be stricken when it was made, so that Appellant would
4 be compelled to amend and refile the claims in question before the
5 cancellation of claim 15, for the purpose of refiling, Appellant should
6 not be compelled to pay for the Patent Office error by losing the val-
7 uable generic claims in suit.

8 Since it is well established that the wrong interpretation of Rule 44
9 by the lower Court was the deciding factor in holding the generic claims
10 in suit did not have their origin in original claim 15 (J.A. 17, lines 1 to
11 16) it is submitted that when it is held that Rule 44 does not apply that
12 the generic claims in suit have their origin in original generic claim 15
13 and are clearly allowable.

14 The Prior Art

15 Appellant agrees that it is proper to cite patents not cited in the
16 Patent Office if there is a showing that the newly cited patents are
17 recently discovered and not known by the Patent Office when the generic
18 claims in suit were being considered by the Patent Office.

19 There was no such showing made though and Appellant avers that
20 citing old prior art without showing that it was newly discovered and had
21 not been considered by the Patent Office can be interpreted only as an
22 effort to confound the issue and such references should not be considered.

23 The McLaughlin Reference No. 458,794 (J.A. 34)

24 In answering Appellant's argument as to this reference it should be
25 noted that Appellee states (page 16 Appellee's Brief, lines 10 and 11)

1 "However, pipe C constitutes such a
2 passage additionally to admitted passage L. "
3 and totally ignores that pipe C leads from a structure described in the
4 specifications (J. A. 35, lines 33) as a spring actuated valve A. This
5 passage C is not comparable with the passage L and its valve K for the
6 reason that passage L is capable of receiving a valve within the float
7 chamber that is held closed by the vapor pressure and float pressure
8 within the float chamber. On the other hand spring actuated valve A is
9 held closed by spring pressure and may or may not be opened by the
10 downward movement of the float. For instance if the vapor pressure
11 within the float chamber should exceed the tension of the spring holding
12 the valve closed it would open the valve without any movement of the
13 float and if the tension of the spring holding the valve closed should
14 exceed the pressure generated by the weight of the float in its downward
15 movement, the valve would not open at all.

16 Appellant's generic claims in suit embrace only a multiple valve
17 structure of the type shown in this reference by the opening L and valve
18 K which are closed and held closed by the vapor pressure and float
19 pressure within the float chamber and are opened in a predetermined
20 order by the downward movement of a float.

21 Since this reference has only one of the type of valve of which a
22 plurality are necessary and since the second valve is spring actuated and
23 may or may not be opened by float action and may be opened by vapor
24 pressure, it is submitted that it could not be made to perform the
25 functions of Appellant's structure as described in the 3 generic claims

1 in suit and therefore should not be considered as a reference.

2 The Singleton Reference No. 7,767 (J.A. 31)

3 Appellee's argument here shows a complete lack of understanding
4 of the structure covered by Appellant's generic claims in suit (J.A. 4
5 and 5) and the structure shown in this reference. For instance generic
6 claim 1 in suit reads partially as follows -

- 7 1. A float chamber, a plurality
8 of fluid passages through the
9 walls thereof, valves in said
10 passages, ... etc

11 Appellant argued that the passages G', G and G, do not constitute
12 such passages as are referred to in the above claim as they definitely
13 do not pass through the walls of the float chamber as is positively stated
14 in this claim.

15 These opening G', G and G, in this reference are not through the
16 walls of the float chamber but open into a single passage C which passes
17 through the walls of the float chamber.

18 Appellee though, blithely states (Appellee's Brief, lines 4 and 5,
19 page 17),

20 "The passages controlled by Singleton's
21 valves G', G and G, constitute the re-
22 quired plurality."

23 Appellant submits that it would be difficult to find a statement more
24 at variance with the actual facts.

25 Appellant's generic claims in suit do not even remotely read on this
reference which could not possibly be made to perform the functions of
Appellant's structure and should be dismissed with a censure for wast-

1 ing the courts time in even considering it.

2 The Clark Reference No. 683,021 (J.A. 37)

3 Here again Appellee disregards the plain showing of the drawings
4 that openings 9 and 10 are one balanced valve with only one opening 19
5 through the walls of the float chamber and are therefore one valve. To
6 meet the last requirement of Appellant's generic claim 1 (J.A. 4),

7 ... "Whereby said fluid passages may be
8 opened in a predetermined order by the
fall of said float"

9 Appellee then asserts (Appellee's Brief, page 17 lines 11 to 14),

10 "In that these valves 9 and 10 move at
11 the same time, the passages are opened
12 in "a predetermined order". The pre-
determined order is simultaneity."

13 This construction of our language is about as distorted as it has
14 ever been Appellant's lot to read. How Appellee can seriously argue that
15 "a predetermined order" is the equivalent of "simultaneous" is incomp-
16 rehensible and Appellant suggests that it does not show an understanding
17 of the limits of the generic claims in question or the structure that is
18 offered as anticipating the claims.

19 How could the pressure from valve 9 be used to operate a motor
20 feed water valve at one water level and the pressure from valve 10 be
21 used to operate a motor fuel cut off valve at a lower predetermined
22 water level when both 9 and 10 open at the same time and have one exit
23 19 and are therefore one valve?

24 The structure of this reference could not perform the function of
25 Appellant's structure as claimed in the generic claims in suit, and these

1 claims do not even remotely read on this reference which should be dis-
2 missed forthwith.

3 Conclusion

4 Appellant believes he has shown in his opening brief: That the three
5 generic claims in suit are the allowable substance of generic claim 15 in
6 the original application that was still pending when his species claim
7 patent issued.

8 That it was necessary to carry the generic substance of claim 15
9 forward by means of the "reservation" as it could not be amended and
10 retained in the original application as one claim was allowed in the orig-
11 inal application and division was required as to the other claims including
12 claim 15.

13 That the Patent Office in considering the original application suggest-
14 ed the refiling of the claims pertaining to the valve construction subject
15 matter of claim 15 (Stipulation J.A. 13, lines 15 to 20) in separate appli-
16 cations.

17 That Rule 44 of the Patent Office did not apply to nullify the reser-
18 vation of April 6, 1940 as the rule is mandatory and is a direction to the
19 Examiner and states "...will not be permitted..." (J.A. 16 lines 24 to
20 25) and there must be a presumption that if the Examiner did receive
21 and accept the reservation and did not require its withdrawal - that the
22 reservation was not of the type that Rule 44 applied to.

23 That Rule 44 has been cancelled for many years (Appellant's Brief,
24 page 21, lines 21 to 25, continued on page 22) a fact which Appellee did
25 not comment on in his reply brief.

1 That the old prior art cited in the Court below but not in the patent
2 office should not be considered as there was no showing that it was newly
3 discovered or was not well known to the Examiners in the Patent Office.
4 In the absence of such a showing the conclusion must be that they were
5 cited simply as a smoke screen and should be dismissed.

6 That Appellee has done serious violence to our language in trying
7 to stretch the plain simple meaning of the generic claims in question to
8 cover the old prior art so that they could be used to claim anticipation.

9 That Appellant has shown without successful contradiction that none
10 of these old prior art references dumped into the case without any
11 explanation from the Patent Office could perform the functions of Appel-
12 lant's structure as claimed in the three generic claims in suit and these
13 claims do not read on this old prior art and therefore should not be used
14 as references against these claims.

15 That in view of the forgoing showing Appellant should be entitled
16 to the 3 generic claims in suit as their patentable substance has been
17 continuously prosecuted from the original application as disclosed in
18 original generic claim 15 and the old prior art cited is not applicable.

19 Wherefore Appellant prays for judgement directing the reversal of
20 the judgement of the Court below and directing the Commissioner of
21 Patents to allow the 3 generic claims in suit.

22 Respectfully submitted,

23 Alva G. Blanchard
24 Appellant
25